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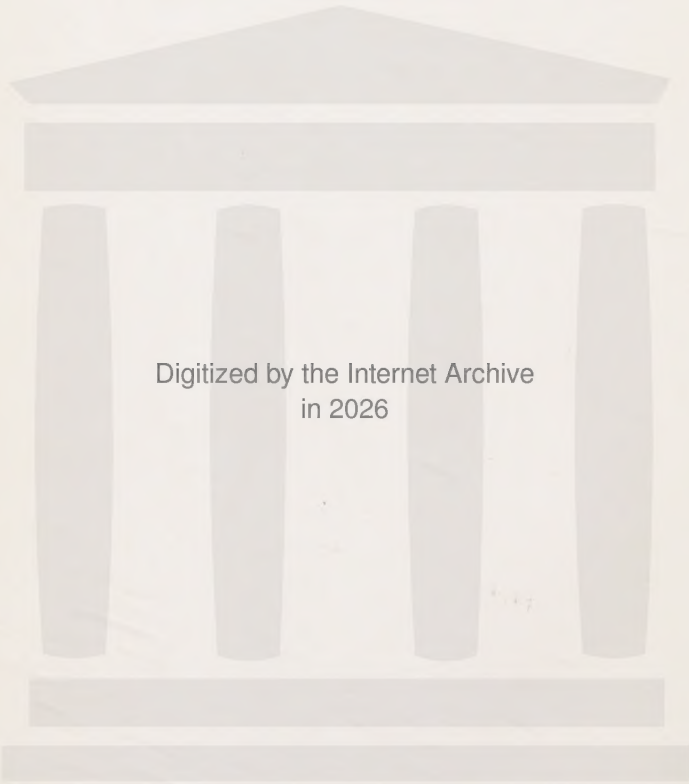
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THE
JAMES SPRUNT STUDIES
IN HISTORY
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*Published under the Direction of
the Departments of History and Political Science
of the University of North Carolina*

VOLUME 35

1953

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VOLUME 35

4892

WAR LABOR BOARDS IN THE FIELD

By

ALLAN R. RICHARDS

CHAPEL HILL

— * —

THE UNIVERSITY OF NORTH CAROLINA PRESS

1953

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WAR LABOR BOARDS IN THE FIELD

By

ALLAN R. RICHARDS

CHAPEL HILL

— * —

THE UNIVERSITY OF NORTH CAROLINA PRESS

1953

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P R E F A C E

Field administration is important. Approximately ninety percent of all federal employees are field employees. And, obviously, most of the federal government's work is performed in the field. Yet, by a conservative estimate, fewer than ten published case studies of field problems are available. The literature on top-level administration outnumbered the literature on field administration by at least twenty to one.

This volume is a minor attempt partially to fill the gap. Its primary concern is field administration, field policies, field problems. It is not intended as a history of National War Labor Board policy development, and it does not pretend to examine NWLB policy—except as it affected regional activities. However, in order to evaluate the regional war labor boards, it has been necessary to explain the development of and some of the substance of NWLB policy. Since the focal point of this study is the region, wage stabilization is necessarily considered at the expense of dispute-settlement, enforcement, and compliance.

The "field," as it is used herein, refers to those organizational subdivisions of a central agency that exercise general jurisdiction over a geographical area within the domestic United States. As a result, this study does not consider the problems that the Seattle Regional Board had with Alaska. Neither does it consider the problems of the Territorial War Labor Board that had jurisdiction over Hawaii. This definition of the field also excludes consideration of the NWLB "commissions," "boards," and "panels" that had jurisdiction over specific industries everywhere in the United States or in limited areas of the United States.

Primary materials and ideas contained in this study come from three basic sources. In order of importance, these are archives, interviews, and experience.

Except for the personnel files, all of the National War Labor Board's extant records are in the custody of the Industrial Records Office, The National Archives and Records Service, General Services Administration. Here a searcher finds verbatim transcripts of all National Board meetings and of some regional board meetings; the correspondence of regional board and staff members; the minutes of the National and regional boards; policy statements and drafts thereof; staff instructions; procedural manuals; organization charts; press releases; all national case files; and selected regional case files. The NWLB personnel files are in the custody of the Office of Personnel

Administration, United States Department of Labor. The hearings on estimates of the NWLB and related agencies, along with memoranda pertaining thereto, are available in the Bureau of the Budget.

Many persons were generous in giving their time to discuss their experience with and ideas about the National War Labor Board. Among those to whom I am thus indebted are Vincent P. Ahearn, formerly Employer Member, NWLB; Philip Arnow, formerly Vice-Chairman, RWLB XI; George T. Brown, formerly Executive Assistant to AFL Members, NWLB; James A. Brownlow, formerly AFL Member, NWLB; Ralph Burton, Bureau of the Budget; Jack G. Day, formerly Chairman, RWLB VII; Harold M. Douty, formerly Chief, Program Appraisal and Research Division, NWLB; Paul N. Guthrie, formerly Vice-Chairman, RWLB IV; Vernon H. Jensen, formerly Public Member, RWLB IX; Clay P. Malick, formerly Hearing Officer and Public Panel Member, RWLB IX; Wayne L. Morse, formerly Public Member, NWLB; Wilson C. Randle, formerly Wage Stabilization Director, RWLB VII; Benjamin C. Sigal, formerly Executive Assistant to CIO Members, NWLB; Clarence O. Skinner, formerly Employer Member, NWLB; John R. Steelman, formerly Director, United States Conciliation Service; Ross Shearer, Bureau of the Budget; David H. Stowe, Bureau of the Budget; Harry D. Wolf, formerly Public Member, Appeals Committee, NWLB; Dallas Young, formerly Wage Analyst, RWLB VI; and M. T. Van Hecke, formerly Chairman, RWLB IV.

Since labor-management problems involve such delicate relationships and since the interviewer wanted honest information and ideas without fear of later sanction, all persons interviewed were assured that their remarks would not be attributed to them. As a result, while many of the facts and many of the opinions ventured in the interviews are reflected in this study, in no instance is the source specifically cited.

The author was employed as an economist by the Fourth Regional War Labor Board in Atlanta from mid-December of 1942 until mid-July of 1943. While this experience was invaluable for acquainting him with the formation of NWLB policy and for giving him a "feel" of its organization and administration, the author does not believe his personal employment has been solely or greatly responsible for his conclusions. As background, this experience was probably indispensable for the study, but as a primary source it has been minimal.

Some people may write books by themselves. But this author has not written this volume by himself. Begun as a doctoral dissertation, *War Labor Boards in the Field* was prepared under the guidance and supervision of Professor James W. Fesler, now Chairman of the Department of Political Science, Yale University. Dr. Fesler's assistance and interest were beyond and above the call of duty. To the extent

that this work is deficient, I have not succeeded in following his suggestions.

M. T. Van Hecke, Professor of Law, University of North Carolina, and Paul N. Guthrie, Professor of Economics, University of North Carolina, read a preliminary draft and offered valuable suggestions from their own experience. Robert G. Dixon, Professor of Government and Politics, University of Maryland, read the first draft and made important criticisms based on his own research. Frederick C. Irion, Professor of Government, University of New Mexico, has read selected portions of the manuscript and offered suggestions from the point of view of a professional colleague with no detailed knowledge of the NWLB. I alone, and not these gentlemen, am responsible for all factual errors and all conclusions contained herein.

I am indebted to Joseph M. Ray, Professor of Government and Dean of the College of Special and Continuation Studies, University of Maryland, and Catheryn Seckler-Hudson, Chairman, Departments of Political Science and Public Administration, American University, for providing teaching assignments while I was doing the basic research in Washington, D. C.

Sidney Netreba, Bureau of Labor Statistics, Department of Labor, gave me access to *The Termination Report of the National War Labor Board* in galley proof. Morris Rieger and his assistants in the Industrial Records Office of the National Archives were more than patient in helping me to locate materials in the NWLB Record Group.

Miss Ruth Kuykendall typed the first draft of the manuscript. Mrs. Olive P. Knox was in charge of the final draft. I was exceedingly fortunate in having the services of these rare ladies who are mechanically efficient and, yet, who know a comma from a period.

My wife Elaine read galley and page proof. Mrs. Banks Vance assisted in compiling the index.

ALLAN R. RICHARDS

Albuquerque, New Mexico
June 6, 1952

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WAR LABOR BOARDS IN THE FIELD

CHAPTER I

INTRODUCTION

When I let my mind pore over these complex events, I have the feeling of multiplicity and confusion; that no historian will ever make a clear synthesis of these days, without omitting more than he neatly extracts. And yet, there is a grand pattern; and each event, big or small, can be shown to be organically tied to its own past and future, and at the same time, casually related to its current surroundings. But neither these casual relations to the environment, nor the organic relations to the past, appear to have determined the succeeding steps. At every point alternatives crowded the stage, and decisions not written in the script were made by the actors. When we study administration, therefore, what we have before us is the record of decisions, opportunistic or planned, bringing some order out of chaos along the path of human purpose. What we must look for are the co-ordinating principles and techniques by which purposes have been achieved. We must examine the teamwork pattern and the evolving machinery of administrative management, and discover, if we can, the causes of administrative success and failure. . . .

—Luther Gulick, *Administrative Reflections from World War II* (University, Ala.: University of Alabama Press, 1948), p. 16.

Students of administration turn to . . . the history of World War II: . . . first, to see to what extent the generally accepted theories and "principles" of administration have found verification under the strains and stresses of war management; and second, to see what practical administrative lessons may be drawn from the tremendous array of wartime experiments, not for a future war but for application to the problems now faced internally as well as internationally. Students of administration . . . need to be concerned with extracting from recent experience its rich harvest for the immediate management problems of a chaotic world.

—Luther Gulick, *Administrative Reflections from World War II* (University, Ala.: University of Alabama Press, 1948), pp. vii f.

Modern wars are not fought on fields of combat alone. "Industrial mobilization in World War II required a 'defense in depth' that reached from individual homes and factories to the battlefronts abroad."¹ The victor begins the fight on the home front and carries it to the field of conflict. The vanquished begins the fight on the home front and loses it there. An effective fighting machine must depend upon the rear echelon of effective production.

Because of the "interdependence of social, economic, political, military and even climatic and personality factors,"² total war today means complete mobilization of a nation's resources. The problems of an economy during war are increased geometrically over those of an economy during peace. The fundamental needs of the civilian populace must

¹ *Industrial Mobilization for War*, Vol. I, *Program and Administration*, Historical Reports on War Administration, War Production Board, General Study No. 1 (Washington: Government Printing Office, 1947), p. 969.

² Luther Gulick, *Administrative Reflections from World War II* (University, Ala.: University of Alabama Press, 1948), p. 15.

be met, as well as the added requirements of the armed services and allied nations. The peacetime economy can better afford disruption of production schedules than the wartime economy, for during conflict a finished product may be consumed only a short time after its manufacture. Economic goods, like money, circulate faster during war.

In World War II, the critical problems of industrial mobilization centered upon plant capacity, allocation of scarce raw materials, and manpower.³ In 1941 and part of 1942 productive capacity was the critical resource, but by the beginning of 1943 this crisis had been overcome. During most of 1942 through mid-1943 shortages of raw materials and their maldistribution plagued industrial production. "Finally, manpower . . . became the most significant limitation on output, and continued so until the end of the war."⁴

Like economic goods, the peacetime labor force was not capable of satisfying the demand. Available sources of supply were explored in order fully to utilize plant capacity. When efforts to increase labor's productivity intensively through longer work weeks had been exploited, expansion of the labor supply was in order. But available workers were fewer. Despite the addition of 11 million men to the military services, 7.7 million workers were added to the civilian working force.⁵

But the increase in the work week and in the labor supply was alone not sufficient to satisfy the urgent production requirements for war. The *laissez-faire* assumption of free mobility of labor works even less well during war than during peace; "throughout the war . . . the labor supply situation was very uneven in different parts of the country."⁶ No agency had authority to enforce the assignment of "manpower to the localities and industries where it was most needed."⁷ The War Manpower Commission had no operating authority in the field. The areas in which demand for labor was greatest were determined by the activities of procurement agencies and by the incidental results of War Production Board orders limiting civilian manufacture. The efforts of the War Manpower Commission "to influence production and procurement policy were not markedly successful."⁸

Even the presence of an adequate labor force at a plant supplied with materials does not insure uninterrupted production. Labor may strike and management may lock-out its workers. Like all elements of production, labor becomes more important in war. During the years 1942 to 1945, economic conditions (excluding the political considera-

³ *Industrial Mobilization for War, op. cit.*, p. 968.

⁴ *Ibid.*

⁵ *Ibid.*, p. 965.

⁶ *The United States at War, Historical Reports on War Administration, Bureau of the Budget, No. 1* (Washington: Government Printing Office, 1947), p. 432.

⁷ *Industrial Mobilization for War, op. cit.*, p. 965.

⁸ *The United States at War, op. cit.*, p. 430.

tion of war) were ripe for strikes. Shortage of labor supply made workers' services of greater value to management. No "scabs" were available to replace the strikers, who as a group were thus assured of being rehired. Management had more business than it could handle and was reaping great profit. Cessation of work injured the pocket nerve. Increase in union membership made possible more unified action among workers. The availability of other unfilled jobs and greater earnings in the forms of historically high wages, increased collateral benefits, and longer hours gave the worker a security that enabled him financially to risk striking. Although labor and management voluntarily entered into a no-strike, no-lock-out agreement, the effects of its occasional violation might have been so severe on the economy that governmental action would become necessary. Even during war there is a "continuity of relationships, and the conditioning of organizations and policies and men by their own yesterday."⁹

Inflation is detrimental to a wartime economy. It results from the rapidity with which great amounts of money and credit circulate for the purchase of goods in short supply. Wartime inflation causes economic goods to be distributed in a haphazard manner not beneficial to a nation's military strength, and it increases costs both to government and to consumers. When a wartime labor supply has been expanded to capacity, high wage rates can only result in the transfer of workers to different jobs, to different industries, or to different localities. Under these conditions high wage rates cannot increase the number of workers available for hire. For the foregoing reasons, the National War Labor Board was given the job of stabilizing wages. Governmental stabilization meant neither the freezing of a man's earnings, nor the freezing of the rate paid for a given job. Adjustments of wage rates were permissible within the framework of Board policy. The National War Labor Board was not responsible for directing the flow of manpower. In "rare and unusual" cases and upon the joint certification of need by governmental agencies such as the War Production Board and the War Manpower Commission, the National War Labor Board did grant increases to permit recruitment. Adjustments on this basis were made in only .06 percent of all cases coming before the Board and affected only .14 percent of all employees involved in Board applications.¹⁰

The National War Labor Board's jurisdiction was of grave significance to the economy. It gave public support to labor-management cooperation, and when voluntary methods of settling labor disputes failed, the Board ordered agreement on its own terms. In view of

⁹ Gulick, *op. cit.*, p. 15.

¹⁰ National War Labor Board, *The Termination Report of the National War Labor Board*, I (Washington: Government Printing Office, 1947), p. 272. Hereinafter this volume is cited as *Term. Report*.

conditions so conducive to strikes and lock-outs, the wartime record is remarkable.¹¹ In addition, the National War Labor Board aided in preventing inflation. It had authority to approve all increases in wage rates. This power enabled it to restrict the amount of money in circulation, to prevent the pirating of labor, and to direct the flow of manpower into essential industries. If the war effort were to be successful, the program of the National War Labor Board had also to be; for if its program had not been successful, the production power behind the front-line troops would have failed.

Regardless of their merits, governmental purposes are not achieved by mere policy decisions. The laws of God may be self-executing, but the laws of men require human assistance. Three closely related elements are necessary for the successful accomplishment of governmental purposes. First, the law embodying the policy must be "knowable."¹² Even during normal times the subjects of the law must be acquainted with it if they are to follow its mandate. During war "knowableness" becomes a factor of more acute significance, because more laws affect greater numbers of individuals who are engaged in activities not usually regulated.

Second, the law must be administered. The presence of old blue laws in musty books does not result in their being enforced. Effectuation of governmental policy requires active prosecution by men. An able student has concluded that "the strength of a nation in time of war is directly conditioned by its management competence."¹³ Between the absence of governmental policy and inefficient administration of its purpose there is little choice.

Third, the accomplishment of governmental policy requires public acceptance. The large scale undertakings and widespread effects of regulation during war mean that "the support of public opinion is essential for good administration under American conditions."¹⁴ In programs that affect large numbers of persons and economic activities in which there are great regional differences, public acceptance becomes even more important, for laws are then more dependent for effectiveness on voluntary compliance with their purpose. The problem of administering a policy takes on greater significance when the subjects of the policy are in opposing economic groups, for here the compliance of organized group opinion must be considered. An early student has summarized this process:

¹¹ See Rosa Lee Swafford, "Wartime Record of Strikes and Lock-outs, 1940-45," Table I, "Strikes and Lockouts in U. S." (Washington: Government Printing Office, 1946), p. 4.

¹² "Knowableness" as a characteristic of the legal order is discussed by Erwin Hexner, *Studies in Legal Terminology* (Chapel Hill: The University of North Carolina Press, 1941), pp. 67 ff.

¹³ Gulick, *op. cit.*, p. 26.

¹⁴ *Ibid.*, p. 110.

... There is not a single function of government of this kind which is not supported on a powerful interest group or set of groups from which it gets all its strength and social effectiveness. In every such case where two opposing groups have their conflicts adjusted or controlled through a ruler we shall find that that ruler is in reality acting as the leader of an interest group or set of groups more powerful than those in immediate conflict, and that the adjustment and limitation which we observe is dictated by that more powerful group.¹⁵

The National War Labor Board attempted to canalize the activities of divergent groups by having labor and industry representatives participate in the administrative process.

The regional war labor boards were extensions of the National War Labor Board in the field. They were the administrative arms by which the Washington office sought to carry out its imposed tasks. The regional boards were instruments to allow the modification of the national program to fit areal differences. To effect its policy, the National Board used as its geographical agents regional boards in replica of itself. Even in the field, industry and labor representatives participated in administration.

Delegation of authority to tripartite boards in the field resulted in the public, industry, and labor groups' being directly responsible for the prevention of disputes and the stabilization of wages. Upon the achievements of this innovation of administrative method, the success of America's wartime production partially depended.

Field administration is a neglected area of study. The bulk of laws and of administrative rules implementing them affect people outside the governmental circle. All the people of the United States do not, conveniently, live in Washington, D. C. Rather the subjects of administration are scattered with varying degrees of concentration throughout the forty-eight states. If administration is to be made effective, it must be brought to the people. General rules and regulations issued from three-story grey buildings off Pennsylvania Avenue look nice in the *Federal Register*, but unless government agents in the field carry out these rules their intended effect is seldom accomplished.

The days of the town meeting are over. The decades that saw its demise brought with them social and economic problems not solvable by local governmental action alone. The Federal Government must act. But in the mass of governmental regulation in the modern world the individual must not become the forgotten man. The scope of Congressional legislation is today broad; the complexities of modern society make this situation not only necessary but also wise. A vote at the polls cannot at the same time reflect opinion on all rules and regulations that affect the individual in his daily life. If government in the

¹⁵ Arthur F. Bentley, *The Process of Government* (Bloomington, Ind.: Principia Press, 1908, 1935), p. 235.

United States is to remain responsive to the people, active reflection of their opinion in the day-to-day administrative process must be encouraged. Administration is dynamic, but Congressional elections come at most every two years. The establishment of field offices and decentralization of authority to them tend to make possible the people's participation in their Federal Government and to make that government responsive to the people.

Federal field offices have long been used to perform governmental functions. Indeed, "approximately 92 percent of the federal population is to be found in the field, not in agency headquarters."¹⁶ But the mere establishment of field offices does not make administration responsive and does not necessarily result in the opinion of the region finding its way up the hierarchy to the centers where broad policy decisions are made. To suggest that the dilemma is solvable only by the creation of field offices is to simplify the problem beyond recognition. How many field offices should be established? In what locations should they be? What territory should they cover? What factors should be considered in making these decisions?

Federal employees working in offices outside of Washington do not solve the riddle. When these employees perform their operating functions under the guidance of rigid national rules or when they merely prepare materials on which decisions are made in Washington, areal responsive administration does not result.¹⁷ Unless regional offices can exercise authority to blend areal peculiarities with national policy and to make those decisions effective without prior approval of the central office, there is not real decentralization.

Delegation of authority is not abnegation of authority. Decentralization of a national agency's power to a field office does not mean resignation of its final responsibility for the program within the area. Indeed, before delegation can be effective broad national policy must already have been decided. Decentralization before the general tenets of the Nation's goal have been formulated results in chaos both in the central office and in the field. If areal officials are to perform successfully, they must be guided in the paths of their activities. Guidance without direction is impossible. Without direction the subordinate wanders in circles. There are, however, no mathematical formulae to enable an agency to determine *when* its policy has crystallized to a delegable extent.

Effective decentralization has two co-equal aspects. First, authority to act in broad discretionary areas of the agency's activities must be delegated to the field. Second, the central agency must at the same time

¹⁶ Earl Latham, *The Federal Field Service* (Chicago: Public Administration Service, 1947), p. 1.

¹⁷ David E. Lilienthal, "Administrative Decentralization of Federal Functions," *Advanced Management*, V (January, 1940), p. 8.

constrain the regional offices to achieve the general policies for which the agency exists. An agency attempting to decentralize must sail between the Scylla of the first and the Charybdis of the second. Mooney and Reiley summarize the requirements:

Territorial autonomy, or decentralized operation, is necessary to give the freedom of action needed to adjust policies to local conditions. Central authority is equally vital, to insure all the advantages arising out of the reactions of the parts on the whole, or the whole on the parts. The striking of this balance is not merely a question of management; it also involves the form of organization through which management can best operate and become effective.¹⁸

It is only after a period of experimentation that agencies are able to steer between both requirements with any degree of achievement.

Accomplishment of these principles requires successful control and supervision. Effective communication between central office and regions is essential. The failure of administrative techniques to communicate action to the field quickly has hindered the management of many agencies,¹⁹ even though they were conscious of the difficulties resulting from delay. The prompt arrival of a directive does not in itself constitute effective communication. Poorly constructed rules printed in unattractive format can directly affect program results. Of the experience of the Office of Price Administration it has been said:

A deflationary regulation which is not read or is not understood or is not enforceable is actually or potentially much more inflationary than a dollar-and-cents ceiling which, on paper at least, may seem to permit an appreciable price increase.²⁰

The ability of a field office to act within the scope of the agency program depends upon its ability to understand that program.

Before communication can become an efficient instrument of guidance, the organizational channels through which it flows must be made clear. If the broad objectives of program policy are to be coordinated nationally and if regional opinion is to be weighed in making policy decisions, chains of command within the hierarchy must be clearly established.²¹ An organization achieving the advantages of both the functional specialists of the central office and the area generalists in the

¹⁸ J. D. Mooney and A. C. Reiley, *Onward Industry!* (New York: Harpers, 1931), pp. 149 f.

¹⁹ For example, see Emmette S. Redford, *Field Administration of Wartime Rationing*, Office of Temporary Controls, Office of Price Administration, General Publication No. 4 (Washington: Government Printing Office, 1947), p. 138.

²⁰ George R. Taylor, Ben Lewis, and J. Howard Miller, "Price Control in the Regions," *Manual of Price Control* (Lecture Series Delivered at the Training Program for Price of the Office of Price Administration, December 1942-March 1943), p. 318.

²¹ David B. Truman, *Administrative Decentralization* (Chicago: University of Chicago Press, 1940), pp. 21 ff.

field offices is not unimportant. If the functional specialists of the national office exercise direct control over their respective components in the field, there is danger of lack of program coordination at the regional level. If the functional specialists of the national office can act only in a staff capacity, there is danger that their potentialities will not be fully realized.²² As effective administration is necessary to achieve policy determinations, so effective organization is necessary to achieve effective administration.

The continuing expansion of federal governmental services makes decentralization of authority more desirable and more necessary, especially if government is to remain responsive to the people. Decentralization through trial and error is wasteful. Knowledge prevents mistakes. Only by knowing the history of past and present problems of decentralization and by knowing their solution can guidance for the future be found. Upon these problems and solutions, the experience of the regional war labor boards sheds light.

²² James W. Fesler, *Area and Administration* (University, Ala.: University of Alabama Press, 1949), pp. 79 f.

CHAPTER II

LABOR BETWEEN THE WARS

. . . *Administrative developments, like organic developments, cannot be understood unless they are related (1) to their own organic past and (2) to the compulsions of the environment in which they exist. . . .*

—Luther Gulick, *Administrative Reflections from World War II* (University, Ala.: University of Alabama Press, 1948), p. 1.

Conflicts between opposing groups whose existence is dependent upon different interests are not easily settled. The intensity and duration of group struggles are determined in part by the individual members' loyalty to other more comprehensive groups that demand greater allegiance. The nation-state, at the apex of the group hierarchy, is in a position to enforce its demand of the individuals' and of other groups' fundamental loyalty. The nation-state supplies the rules of conduct in order to utilize the force of group conflict for public purposes. One student has summarized:

In order that governmental atrophy may be avoided, the conflicts of functional interest necessarily require a higher authority (than the group organizations representing those interests) to maintain the more general and common interests of order and justice in the political community, to select and give priority to social purposes, to define the limits of functional interest, and to enforce methods of settling the conflicts of interest when the will to do so is lacking on the part of the groups themselves. Functional interest does not seem to be a force tending toward social unity.¹

In times of crisis particularly, disagreement between groups is subsumed under their loyalty to the nation-state. Upon voluntary agreement to compromise their differences, the existence of the groups may depend.

Industry and labor in the United States are two of many groups. Each seeks to gain its own *extreme* purposes at the expense of the other, although many changes in labor-management relations are not disadvantageous to either. Many labor demands can result in a direct disadvantage to industry; many industry demands can result in a direct disadvantage to labor. An increase in wages of twenty-five cents an hour may be a gain for labor, but a distinct loss to management. Profits may be decreased and prices raised. A decrease in wages of twenty-five cents an hour may be a gain for management, but a distinct loss to labor. Profits may be increased and prices reduced. When

¹ Avery Leiserson, *Administrative Regulation* (Chicago: University of Chicago Press, 1942), p. 266.

labor and management disagree over their relative positions in the industrial relations pattern, the groups' existence is threatened. Disagreements about the "gain-loss" areas of labor relations and about union security provisions engender the most bitter conflicts. In both, fundamentals are involved. It is here where "labor relations" can, perhaps, be more accurately called "labor problems."

Collective bargaining agreements cannot be made effective in a vacuum. Somewhere in the process of their completion the public interest, society, becomes involved. When labor and industry resort to their ultimate weapons of strike and lock-out, societal interest reaches its peak. It is the public that suffers from the lack of coal. The effect of a strike or lock-out upon the public causes companies and labor unions to seek the strong support of public opinion. In normal times the public welfare is left more or less to fend for itself. In times of stress the two conflicting group interests, labor and management, agree to subordinate their differences to the public interest.² But they are sometimes assisted in this general determination by governmental action and public opinion.

WORLD WAR AND THE TWENTIES

The First World War period, 1917-1920, introduced the modern period of labor-management cooperation to further the public interest.³ The American Federation of Labor pledged its support to the war and in return gained positions on the Council of Defense and on the National War Labor Board. Labor agreed to produce to its capacity. Industry agreed not to discriminate against union men. The eight hour day, the necessity for a "living wage," and equal pay for women were recognized principles that the War Labor Board applied. The period was characterized by a growth of two million in union membership and the ascendancy of labor to a position approaching greater equality with industry.

The immediate postwar period, however, saw labor's wartime gains sapped away. A nation-wide campaign for the "American Plan," a drive for the open-shop, was effective. The rolls of the American Federation of Labor declined approximately 1,500,000, and only a gain of 500,000 remained from the war period. From 1923 to 1929, the status of organized labor remained relatively the same. In this period, however, the right of railroad workers to select representatives for purposes of collective bargaining was formally recognized. The Railway Labor Act of 1926 created the National Mediation Board to adjust labor dis-

² The twin questions "Is not the public interest furthered when labor gains its demands?" and "Is not the public interest furthered when industry withstands labor's demands?" are recognized, but are not considered here.

³ The periodization and much of the material content of labor history prior to 1939 is adopted from Carroll R. Daugherty, *Labor Problems in American Industry* (Cambridge: Houghton Mifflin Co., 1938), pp. 334 ff.

putes in the railroad industry. The major railroad unions were independent. Only a few shopmen were American Federation of Labor members.⁴ Total American Federation of Labor membership decreased slightly in this period because of employers' anti-union drives. Federal and state courts used the injunction widely in thwarting strike efforts. A lack of intra-union democracy combined with the exposure of the rackets of some union leaders did not further the cause of unionization. The depression period, 1929-1932, "made workers readier for unionization than they had been for almost fifteen years."⁵

The Norris-LaGuardia Act of March 23, 1932, presaged labor's gains in the New Deal period.⁶ It made the yellow dog contract unenforceable in the federal courts. And the jurisdiction of United States courts in issuing labor injunctions was limited to specific conditions determined by a strict procedure. The injunction had been particularly onerous to labor because the original hearing was *ex parte* and because a temporary order might result in the effectiveness of labor's cause being lost, even though a final decree might never be entered.

THE NEW DEAL PERIOD

The New Deal brought with it much to strengthen the position of labor in the economy.⁷ The National Labor Board, created in September of 1933 under the National Industrial Recovery Administration and later by Executive Order, faced many problems similar to those encountered by the National Labor Relations Board under the Wagner Act.⁸ Section 7(a) of the National Industrial Recovery Act provided that every industrial code should guarantee employees the right to organize and to bargain collectively through representatives of their own choosing and to join and to participate in the activities of any union. Administrative difficulties led to the creation of the first National Labor Relations Board to supplant the National Labor Board.⁹ With the decision in the *Sick Chicken Case* holding the National Industrial Recovery Administration unconstitutional, the period of the first National Labor Relations Board ended.¹⁰

⁴ Harold W. Metz and Meyer Jacobstein, *A National Labor Policy* (Washington: The Brookings Institution, 1947), pp. 7 ff.

⁵ Carroll R. Daugherty, *op. cit.*, p. 341.

⁶ 47 U. S. Statutes 70, Chapter 90.

⁷ The history of the New Deal's labor policy is effectively discussed in Irving Bernstein, *The New Deal Collective Bargaining Policy* (Berkeley, Calif.: University of California Press, 1950).

⁸ Executive Order 6511, December 16, 1933. The work of the National Labor Board is covered by L. L. Lorwin and A. Wubnig, *Labor Relations Boards* (Washington: Brookings Institution, 1935); H. G. Brainard, "The National Labor Board, 1933-34" (Ph.D. Dissertation, Department of Economics, University of Illinois, 1936); C. R. Daugherty, *Labor under the NRA* (Boston: Houghton Mifflin, 1934); and W. H. Spencer, *Collective Bargaining under Section 7(A) of the NIRA* (Chicago: University of Chicago Press, 1934).

⁹ Executive Order 6763, June 29, 1934.

¹⁰ *Schechter v. United States*, 295 U. S. 495 (1935).

The Wagner Act of 1935 had thus been foreshadowed by the activity of the National Mediation Board, the National Labor Board, and the original National Labor Relations Board. The National Labor Relations Act created a National Labor Relations Board.¹¹ Two of the National Labor Relations Board's three original members had served on previous boards. John M. Carmody had been a member of the National Mediation Board; Edwin S. Smith had been a member of the National Labor Board.¹²

The National Labor Relations Act gave employees subject to Congressional jurisdiction the right to participate in the activities of labor unions, to bargain collectively through representatives of their own choosing, and to engage in concerted activity for the purpose of collective bargaining. To enforce these rights the Act named five "unfair labor practices." The employer might not "interfere with, restrain, or coerce employees" in their right to choose representatives for collective bargaining. He might not interfere with or make financial contribution to any union. The employer might not discriminate against any employee in regard to hire, term, or conditions of employment. He might not discriminate against employees for exercising their rights under the Act. He might not refuse to bargain collectively with his employees' representative.

The Act authorized the National Labor Relations Board to issue cease and desist orders upon the finding of unfair labor practices. If a Board order were violated, it was to be taken into a Circuit Court of Appeals for confirmation. Violation of the court order constituted contempt of court. The Board might correct the injustice to the employee by reinstating him with back pay. The Act also authorized the Board to "certify" to the employer the workers' representative, if there were one. For these purposes the Board might hold secret ballot elections.

Not only did the New Deal positively encourage the growth of unions so that they might bargain for their own gains in wages, hours, and working conditions, but also it directly encouraged better conditions. The Walsh-Healey Act of 1936 provided that no person employed on a job being performed under a federal contract be required to work more than eight hours a day or forty hours a week; for practical purposes this meant time-and-a-half for all overtime. The Fair Labor Standards Act of 1938, generally, set forty cents an hour as the minimum wage for

¹¹ 49 U. S. Statutes 449. Act of July 5, 1935. General works on the Wagner Act include D. O. Bowman, *Public Control of Labor Relations* (New York: Macmillan Co., 1942); R. R. R. Brooks, *Unions of Their Own Choosing: an Account of the NLRB and Its Work* (New Haven: Yale University Press, 1939); E. R. Nichols and J. W. Logan, *Arbitration and the NLRB* (New York: H. W. Wilson Co., 1937); L. S. Silverberg (Ed.), *The Wagner Act after 10 Years* (Washington: Bureau of National Affairs, 1945).

¹² L. S. Lyon, M. W. Watkins, and V. Abramson, *Government and Economic Life, I* (Washington: The Brookings Institution, 1939), Footnote 31, pp. 390 f.

industries in interstate commerce, although the rate was to be achieved by a process of gradual increase. It established a basic work week of forty hours, additional time worked being compensated by time-and-a-half pay.

The New Deal period covered one other important change in the labor picture—the establishment and growth of the Congress of Industrial Organizations. Failure of the American Federation of Labor satisfactorily to organize the unskilled workers of the mass production industries sired the CIO, which was nurtured by the government's active protection of the right to organize and its passive encouragement of this right. Whether "dual unionism" has aided or deterred unionism will, perhaps, always remain a moot question. With the beginning of the CIO, membership in affiliated labor unions did, however, grow measurably—whether the cause be the CIO, the times, or the laws.

In 1933, the AFL claimed only 2,150,000 members. By 1937, after suspending the 32 national unions that had enrolled under the CIO, the AFL alone had 3,000,000 members. In this same year, total membership in outside unions had risen to a record high of about 7,000,000.¹³ In 1939 total membership in outside unions was 9,000,000.¹⁴

THE EARLY DEFENSE PERIOD

By September 3, 1939, when France and Britain declared war on Germany, labor was stronger in membership and in position in the American economy than it had ever been before. While France and Britain were fighting a delaying war and while the United States was assuming a position of aggressive defense, labor's power continued to grow. Increasing industrial activity, stimulated by the prospect of serving markets previously controlled by Europe and, indeed, by the prospect of serving Europe itself as a market, prompted the demand for more workers. The calling of the National Guard into active military service and the passage of the Selective Service Act reduced the number of employables. The flurry of defense plant construction quickly used the available supply of skilled workers in the building trades. Because the contractors wanted to assure themselves of the necessary labor and because the larger contractors were already unionized, they more readily signed closed shop agreements. The unions were to provide the workers. And when the regularly available supply was gone, the doors to temporary membership were opened to those who partially qualified and who would accept jobs. The nearer the United States came to Pearl Harbor, the greater the swollen ranks of labor unions became; the nearer the United States came to Pearl Harbor, the

¹³ Carroll R. Daugherty, *Labor Problems in American Industry* (Cambridge: Houghton Mifflin Co., 1938), pp. 342 ff.

¹⁴ Earl L. Shoup, *The Government of the American People* (Boston: Ginn and Co., 1946), p. 1105.

more important labor became to the national economy. Throughout the defense and war periods labor organizations were represented on practically every important agency.¹⁵

THE NATIONAL DEFENSE ADVISORY COMMISSION

On May 28, 1941, three days after he had created the Office for Emergency Management in the Executive Office of the President, President Roosevelt established the National Defense Advisory Commission. The "advisors" were to function individually, rather than as a collegial body. Sidney Hillman, President of the Amalgamated Clothing Workers, was appointed a representative on employment.¹⁶ By July 1940, Hillman's Labor Division of the NDAC was organized and ready to work. "To bring organized labor into closer integration with the production activities of the Advisory Commission," Hillman appointed a sixteen-man Labor Policy Advisory Committee composed of six representatives from the AFL, six from the CIO, and four from the Railroad Brotherhoods.¹⁷ This committee met regularly and provided effective liaison between the NDAC and the labor organizations. A Labor Requirements and Employment Standards Section forecast the need for workers. A Labor Supply and Training Section was responsible for the recruitment and training of workers for industry.¹⁸

Because of "an inherent weakness in the Department of Labor and the insufficiency of its Conciliation Service to meet the demands of a post depression era of labor-management disputes," Hillman at this time created a Labor Relations Branch that attempted to mediate disputes when the United States Conciliation Service of the Department of Labor failed to achieve settlement.¹⁹ John R. Steelman's Conciliation Service was understaffed for budgetary reasons. In order to prevent duplication and to make more effective use of Conciliation Service facilities, Hillman went directly to the President to solicit funds for its expansion.²⁰

Meanwhile, the NDAC, largely through the efforts of the Labor Policy Advisory Committee in Hillman's branch, adopted several principles on labor questions. These principles included a general limitation

¹⁵ For example, see John L. Afros, "Labor Participation in the Office of Price Administration," *American Political Science Review*, XL (June, 1946), p. 458; Edythe W. First, *Industry and Labor Advisory Committees in the National Defense Advisory Commission and the Office of Production Management*, Historical Reports on War Administration, War Production Board, Special Study No. 24, 1946; Richard J. Purcell, *Labor Policies of the National Defense Advisory Commission and the Office of Production Management, May 1940 to April 1942*, Historical Reports on War Administration, War Production Board, Special Study No. 23, 1946.

¹⁶ Bureau of the Budget, *The United States at War*, Historical Reports on War Administration, No. 1 (Washington: Government Printing Office, 1937), pp. 22 ff. Hereinafter cited simply as *U. S. at War*.

¹⁷ Richard J. Purcell, *op. cit.*, p. 8.

¹⁸ *Ibid.*, pp. 6 f.

²⁰ *Ibid.*

of the work week to forty hours with payment for overtime work at time-and-a-half, the suggestion that all defense work comply with existing Federal, state, and local laws, and a declaration against discrimination in employment because of age, sex, race, or color.²¹ These principles were adhered to by all Federal government agencies for the duration of the war. On December 9, 1940, the Labor Policy Advisory Committee pledged that labor would use all conciliation facilities to settle jurisdictional disputes prior to taking action that might impede production.²²

The National Defense Advisory Commission was, in effect, broken up on January 7, 1941, when the President issued Executive Order 8629 establishing the Office of Production Management. William S. Knudsen was named Director General, and Sidney Hillman was named Associate Director General. The production and materials divisions of the NDAC immediately were transferred to the Office of Production Management. On March 17, the Labor Division was formally transferred from NDAC to OPM. Because OPM was an organization that would concern itself with defense production, the Labor Division had the duty to "assist in the prevention and adjustment of any labor controversies which might retard the defense program. . . ."²³

THE STRIKE PATTERN

During the year 1940 strikes and lock-outs had posed no great problem for the defense effort. With 1939 as a comparison, the record was exceptionally good. In 1939 there were 2,613 strikes and lock-outs and in 1940 there were 2,508. In 1939 a total of 1,170,962 workers were involved, and in 1940 a total of only 576,988. In 1939 man-days idle totaled 17,812,219, and in 1940, 6,700,872. In 1939 strikes and lock-outs involved 4.7 percent of all persons employed, and in 1940, only 2.3 percent.²⁴ However, as time elapsed any strike or lock-out had a greater effect on the economy, especially were it in a defense industry. An intensified rearmament program in the winter of 1940-41 gave rise to further increased industrial activity that was accompanied by a raised cost of living. These conditions were fertile ground for labor-management disputes.

In December 1940 a total of only 147 strikes and lock-outs occurred; whereas the number increased sharply to 316 in March 1941. In December of 1940 the number of man-days idle was only 458,314; whereas in March 1941 the total rose to 1,543,803.²⁵ And these increases occurred in spite of the fact that the Conciliation Service claimed the

²¹ *U. S. at War*, p. 29.

²² Edythe W. First, *op. cit.*, p. 60.

²³ Richard J. Purcell, *op. cit.*, p. 16.

²⁴ Rosa Lee Swafford, *op. cit.*, p. 4.

²⁵ Louis J. Jaffe and William Gorham Rice, Jr., *Report on the Work of the National Defense Mediation Board, March 19, 1941-January 12, 1942*, Bureau of Labor Statistics, Bulletin 714 (Washington: Government Printing Office, 1942), p. 1.

successful disposition without strike or lock-out action of ninety per cent of all industrial disputes that were reported to it before they occurred.²⁶

By this time the Conciliation Service staff had been expanded and conciliators were stationed at strategic locations throughout the United States, so that the locale of any dispute might be reached by a half-day's travel by a conciliator.²⁷ When speed becomes important, a governmental agency is more likely to move offices to the scene of action. Both the government and the parties under its regulation benefit from quick action. Speedy settlement can best be achieved through decentralization of authority in the field.

Strikes and lock-outs were now acute enough to merit their consideration by a special agency, for by early in March the President, on the recommendation of the Secretary of Labor, was apparently considering the establishment of the National Defense Mediation Board.²⁸ Director General Knudsen announced his knowledge of these preparations to the OPM Council on March 7. On this date no action was taken, however, because of Hillman's absence from the meeting.²⁹ Philip Murray had already announced his opposition to this plan. At the next meeting of the Council on March 17, 1941, Hillman indicated that he and Knudsen had been consulted by the President on the wisdom of establishing a separate tripartite board.³⁰

THE NATIONAL DEFENSE MEDIATION BOARD

The National Defense Mediation Board was created on March 19, 1941, by Executive Order 8716.³¹ It was the first defense agency to be concerned solely with labor disputes. The creation of the Board magnified a jurisdictional problem that had heretofore existed only between the Conciliation Service and Hillman's OPM Labor Relations Section. Now, there were three active agencies involved in mediating labor disputes.³² Before the war was to be won, however, more than three agencies had their fingers in the strike pie. This duplication, a recurrent wartime problem, was almost unavoidable. Events proved that

²⁶ Secretary of Labor, *Annual Report*, For the Fiscal Year Ended June 30, 1941 (Washington: Government Printing Office, 1941), p. 3.

²⁷ *Ibid.*, p. 2.

²⁸ *Ibid.*, p. 3.

²⁹ *Minutes of the Council of the Office of Production Management, December 21, 1940, to January 14, 1942*, Historical Reports on War Administration, War Production Board, Documentary Publication No. 2 (Washington: Government Printing Office, 1946), p. 9.

³⁰ *Ibid.*

³¹ *CFR, Cum. Supp.*, 8719. Carl Vinson introduced a bill in the House to give the NDMB statutory recognition, but the bill did not get beyond the hearings stage.

³² Richard J. Purcell, *op. cit.*, pp. 179 f; Harry A. Millis and Royal E. Montgomery, *Organized Labor* (New York: McGraw-Hill, 1945), Footnote 2, p. 762; William M. Leiserson, "Labor Faces a Crisis," *American Magazine* (January, 1945), p. 21.

a separate agency to aid in the settlement of disputes was necessary to the effective conduct of the war. But there had been no need of a separate agency until March 1941; the Labor Relations Division of the NDAC and the OPM were, in the days of their supremacy in labor relations, sufficient for the job. Nevertheless, the fact that the NDAC and OPM had assumed jurisdiction in labor disputes colored the future activity of the NDMB and was the cause of much jurisdictional conflict, waste, and confusion.

Executive Order 8716 authorized the establishment of a tripartite board of eleven men, four of whom were to represent the employer, four of whom were to represent the labor organizations, and three of whom were to represent the public. The labor representation was always equally divided between the AFL and the CIO. Clarence A. Dykstra was appointed public member and chairman of the Board and served in that capacity until his resignation on July 1, 1941. On that date William H. Davis, formerly a public member, became Chairman. Other public members were Frank P. Graham and Charles E. Wyzanski, Jr., whose service began on July 18, 1941. Labor was represented by George M. Harrison, Thomas Kennedy, George Meany, and Philip Murray. Employers were represented by Cyrus S. Ching, Roger D. Lapham, Eugene Meyer, and Walter C. Teagle. Most of these men were to hold important posts with the NDMB's successor, the National War Labor Board. Many alternate Board members and staff employees who served on the NDMB were to rise to responsible positions on the NWLB, its regional boards, and its national staff. Among these were alternate members representing the public, Wayne L. Morse; representing the employer, Frederick S. Fales, George Mead, and Gerard Swope; representing labor, John Brophy, Emil Rieve, George Gooze, and Robert J. Watt. Panel assistants and special agents of the Board who were to rise to influential positions were Lewis M. Gill, George Kirstein, Thomas Fair Neblett, E. E. Witte, Nathan P. Feinsinger, Dexter Keezer, Vernon Jensen, and Harry Shulman.

The NDMB was authorized to make "every reasonable effort to adjust and settle" the disputes certified to it. Its jurisdiction was limited to cases that affected national defense and that were certified to it by the Secretary of Labor. Paragraph 2 of the Order reads:

Whenever the Secretary of Labor certifies to the Board that any controversy or dispute has arisen between any employer (or group of employers) and any employees (or organization of employees) which threatens to burden or obstruct the production or transportation of equipment or materials essential to national defense . . . ,

the Board may assume jurisdiction. The Secretary of Labor appointed a three man committee composed of the Chairman of the NDMB, the Director of the Conciliation Service, and a representative of OPM to

advise her as to the suitability of certifying any dispute.³³ In many instances, OPM's representatives learned of the possibility of a dispute while performing their work in line with increasing production. The Labor Branch would be informed, and if it failed to achieve agreement between the parties, the Conciliation Service would be notified.³⁴ After these two agencies attempted mediation, the NDMB would be called in.

When the NDMB had acquired jurisdiction of a dispute, it was to follow a procedure involving three steps.³⁵ First, it was to attempt to mediate the dispute. Mediation was, perhaps, quite necessary at this time, even though it duplicated the previous efforts of other agencies. Mediation by the Board might be more effective because of the tripartite structure of the mediation panel. Disputants might be more willing to yield under pressure from their respective representatives. Historically, free collective bargaining had been encouraged by government, and compulsory imposition of a decision was regarded as "un-American," totalitarian, and not in accordance with a "free economy." Second, if the NDMB failed to mediate the dispute, it was to suggest voluntary arbitration. The Board had no power to impose arbitration. It might merely recommend it. Third, if the parties failed to agree to voluntary arbitration, the Board was authorized to investigate further, to hold hearings (although it could not compel attendance), and to make recommendations for the settlement of the dispute.³⁶ The recommendations of the Board were in no way binding upon the parties. However, two types of pressure encouraged the parties to accept the formal suggestions. The Board was authorized to make public its findings of fact and its recommendations, and thus the force of public opinion might be brought to bear. And, finally, it might certify the dispute to the President who might use his war powers to take over the plant. Thus, although the Board *formally* had no arbitral powers, in effect it did have.

The full National Defense Mediation Board seldom met in executive session. Cases were normally handled by a division of the board or by a special panel, but the tripartite character of the board was preserved in these subordinate units. The part-time status of the Board members was a great disadvantage. Many times the membership of the panel would change while the case was before it. In some instances panel members were persons who had not yet been appointed to the Board as alternate members.³⁷ The panel exercised all the authority of the full board, issued its recommendations, and publicized them without conference with the entire NDMB. All the panels met in Washington, and parties to the dispute were required to spend the

³³ Secretary of Labor, *Annual Report, For the Fiscal Year Ended June 30, 1941* (Washington: Government Printing Office, 1941), p. 22.

³⁴ Richard J. Purcell, *op. cit.*, pp. 179 f.

³⁵ L. J. Jaffe and W. G. Rice, *op. cit.*, p. 1.

³⁶ *Ibid.*, p. 19.

³⁷ *Loc. cit.*

time and money necessary to present their cases there. The "necessary experts, assistants, officers, and employees, and . . . necessary supplies, facilities, and services" were, according to Executive Order 8716, furnished by OPM.

Substantively, the NDMB developed the principle that it would refuse to consider a strike case before production had been resumed.³⁸ Later the National War Labor Board adhered to this policy. But it is exceedingly doubtful that the NDMB developed any other principles which subsequently proved useful to the NWLB. The NDMB avoided any determination of what prevailing wage rates should have been.³⁹ Jaffe and Rice, the NDMB historians, agree that "It is probably correct to state that the Board did not adopt a fixed or inflexible attitude toward demands for the union shop or union maintenance."⁴⁰ They defend the Board's "principles" in the following manner:

The point was often made both inside and outside of the Board that unlike the National War Labor Board of 1917-18, this Board did not operate under formulated principles and that its disposition of one matter did not serve as a precedent in another; and there was a resolution by the Board to that effect. The distinction between the two Boards has been exaggerated since it is only with respect to the demands for the union shop and union maintenance that the question of formulating a policy was important or controversial. In a number of respects the present Board proceeded upon the basis of well understood principles though they may not have been made explicit. One of the principles of the War Labor Board was the recognition of labor's right to organize and to bargain collectively. Since this principle had been enacted into law, it was, of course, equally a principle of the present Board. The Board accepted as binding the provisions of the National Labor Relations Act together with the interpretations of these provisions by the National Labor Relations Board. Furthermore, the Board refused to permit one party to a collective agreement to open up an existing contract during its life unless the other party agreed. The principles of the War Labor Board provided that in fixing wages, hours, and conditions of labor, regard should always be had to labor standards, wage scales, and other conditions prevailing in the localities affected and that minimum rates of pay should be established which would insure the subsistence of the worker and his family in health and reasonable comfort. These are principles which have either been enacted into law or so thoroughly accepted that inevitably they would be and were applied by this or any similar board.

It was the opinion, at least of the majority of the members, that the Board itself, being primarily a mediatory board, could not consistently adopt a set policy upon a matter concerning which there was basic disagree-

³⁸ Secretary of Labor, *Annual Report, For the Fiscal Year Ended June 30, 1942* (Washington: Government Printing Office, 1942), pp. 4f.

³⁹ L. J. Jaffe and W. G. Rice, *op. cit.*, p. 22.

⁴⁰ *Ibid.*, p. 28.

ment between employers and employees. To some extent this attitude was a true reflection of the mediatory nature of the Board. . . . The tripartite composition of the Board explained much. It had not only to solve the controversy before it, but to do it without disaffecting the Board members. The difficulty arose where it was called upon to take positions which seriously offended one or the other group and which could not be fortified by a reference to well-established governmental policy.⁴¹

Although the NDMB was formally in existence until January 12, 1942, its effectiveness ended early in November of 1941 when the CIO members resigned in protest to the recommendation in the *Captive Mines Case*.⁴² After this exodus, the Secretary of Labor certified no more CIO cases to the Board. However, the NDMB regarded itself as being responsible for all cases that had previously been certified to it and attempted settlement of the old CIO cases without the use of panels.⁴³

During its ten months of existence, the Board had received a total of 118 cases which involved a total of 1,191,664 workers. When its work was transferred to the NWLB, 96 of these cases had been settled.⁴⁴ During the year 1941 the number of strikes had risen by approximately 1800 over 1940. The number of workers involved in strikes and lock-outs increased by about 400 percent over the same year. The number of man-days idle had increased by about 300 percent. And the percentage of the Nation's employees involved in strikes increased from 2.4 to 8.4, the highest since 1922.⁴⁵

It is significant to note too that employers held the major deficiencies of the NDMB to be "the absence of basic principles or policies to guide the Board in dealing with cases and in making recommendations," and "the Board's practice of dealing with each case separately, regardless of its action in previous cases."⁴⁶

THE LABOR-MANAGEMENT CONFERENCE

The month that intervened between November 11, 1941, and December 7, 1941, saw governmental machinery for the settlement of industrial disputes at almost a standstill. Philip Murray and William Green publicly suggested a labor-management conference, but the suggestion was not met with enthusiasm by industry leaders. In governmental circles, William H. Davis and Secretary of Labor Perkins were

⁴¹ *Ibid.*, pp. 23 f.

⁴² NDMB Case No. 20B.

⁴³ L. J. Jaffe and W. G. Rice, *op. cit.*, pp. 7 f.

⁴⁴ *Ibid.*, p. 2.

⁴⁵ Rosa Lee Swafford, *op. cit.*, p. 4.

⁴⁶ Industrial Relations Counselors, Inc., "Employer Reactions and Opinions Concerning the National Defense Mediation Board," New York, dated December 12, 1941. This survey reports the replies of thirty-six employers who had participated in 40 cases before the Board.

privately in favor of the idea of such a conference.⁴⁷ With the resignation of the CIO members of the NDMB, Congressmen began to introduce bills to provide for the peaceful settlement of labor disputes. In the House at least eleven such measures were introduced and in the Senate three. The Smith Bill would have made illegal those strikes called without a majority vote of employees by secret ballot and would have imposed a "cooling off" period. It actually passed the House on December 3, 1941, by a vote of 252 to 136. Congressional action was temporarily halted by Senator Elbert Thomas' request on the day after Pearl Harbor that Senatorial action on labor legislation be postponed forty-eight hours. Thomas' purpose was to allow labor and management to agree on a method of voluntary settlement as a substitute for governmental action. The Senator's request was granted, and on December 11 the President invited 12 representatives both from labor and industry to participate in the Labor-Management Conference.

The Conference met in Washington on December 17, and after a brief session with the President retired to the conference room with Moderator William Davis and Associate Moderator Elbert Thomas to begin consideration of its work. Wednesday afternoon Philip Murray presented a plan for a bi-partite industry council, but it was rejected by both the AFL and the industry members. On the second day of the conference the industry members, who had come prepared to stay a month and draw up a rather detailed statement of principles of labor-management relations during wartime, submitted a general statement of principles of industrial peace, but no action was taken. In the afternoon session of the same day, the CIO and AFL members agreed upon the idea of establishing a war labor board, and the industry members recessed to consider this proposal. The labor members' plan would have provided equal representation for labor and industry, but would have had only one public member, who would preside. No compulsory powers were suggested. On Friday afternoon, the employer members presented a counterproposal that fundamentally accepted the labor plan—with two exceptions. The war labor board recommended by the employers would have been a structural duplicate of the NDMB—four members representing labor, four representing industry and three members representing the public. More important was the industry proposal to exclude from the jurisdiction of the board the issue of union security. In recognition of the fact that it was giving up the right to strike, labor felt that it should be allowed to argue for the closed shop, the union shop, and maintenance of membership—all three of which would have been beyond the jurisdiction of the board had the employer

⁴⁷ "The Wartime Industry-Labor Conference of December 17-23, 1941," a thirty-one page typewritten monograph to be found in the files of the NWLB Historian at the National Archives. Unless otherwise indicated, the rest of the material in this chapter is a summary of this monograph.

position prevailed. The Conference was thus deadlocked on the issue of union security. And Moderator Davis conveyed this message to the President by telephone. He was instructed to recess the meeting until the following Monday.

On that day the positions of the opposing parties remained basically unchanged. In the morning session Associate Moderator Thomas, apparently without prior clearance with Moderator Davis, introduced a resolution embodying three points upon which both sides were seemingly in agreement. This resolution recognized that:

1. There shall be no strikes or lock-outs.
2. All disputes shall be settled by peaceful means.
3. The President shall set up a proper War Labor Board to handle these disputes.

Labor immediately moved the acceptance of the motion, but industry voted against it because of the word "all" in the second sentence. In the afternoon session, the industry members would have adopted the resolution with a fourth point that would have removed union security issues from the jurisdiction of the board. Again Moderator Davis called the White House and indicated the impasse. He was instructed to order the Conference to reconvene on the following afternoon.

On Tuesday morning Davis and Thomas met privately with the President and explained the state of the Conference. Tuesday afternoon Davis presented to the assemblage a letter from the President. The letter read, in part:

I am happy to accept your general points of agreement as follows:

1. There shall be no strikes or lock-outs.
2. All disputes shall be settled by peaceful means.
3. The President shall set up a proper War Labor Board to handle these disputes.

Government must act in general. The three points agreed upon cover of necessity *all disputes* that may arise between labor and management.⁴⁸

The position of labor had prevailed! It was unequivocally clear that the new board was to have jurisdiction over issues of union security. Several hours after the Conference adjourned, the industry members accepted the President's "direction." In order to achieve labor-management peace in time of war, both groups had made sacrifices to the more inclusive group, the nation-state, to which their more fundamental loyalty lay.

It is significant to note that the issue of union security, which had been the impasse of the Labor-Management Conference, and which industry had been forced to swallow, was also to become the most bitterly

⁴⁸ I have supplied the italics.

fought issue before the Board and the one to engender the most perplexing problems of administration and operation. Further, one must note the absence of any guiding principles upon which the proposed board was to make its decisions. Because of the intensity of feeling over the issue of union security, one is inclined to wonder whether the adoption of principles could have been achieved. Absence of principles to apply continued to be one of the most constant criticisms of the NWLB, as it had been of the NDMB.

Because it achieved only general agreement, the Conference did not provide precise material for the drafting of an executive order. Many questions remained unanswered. Should the order provide principles under which the Board was to decide cases? How detailed should the procedure included in the order be? Should the order provide for a panel of permanent umpires, similar to those used by the National War Labor Board of 1917-18? Should the order contain provisions for a "living wage"? These and many similar questions were unanswered when the Conference adjourned.

The order was drafted by the Bureau of the Budget. Among those consulted were Chairman Davis of the NDMB, Secretary of Labor Perkins, Attorney-General Biddle, NLRB members Leiserson, Reilly, and Millis, Charles Wyzanski of the NDMB, and Sidney Hillman of OPM. Less than five days before its issuance, Hillman stated "that he was opposed to the order on two fundamental grounds, namely, the size and part-time character of the Board and its ambiguity as to arbitration."⁴⁹

On January 12, 1942, Executive Order No. 9017 was issued.⁵⁰ In approximately one month after the beginning of war, democracy had shifted gears. The barrier of an ineffective and dismembered National Defense Mediation Board had been climbed. And a National War Labor Board that was to live through the ravages of war had been organized.

⁴⁹ David Stowe, Bureau of the Budget, to B. L. Gladieux, Budget Examiner, Memorandum, Subject: "Proposed Executive Order for the Establishment of the NWLB," dated January 9, 1942.

⁵⁰ *CFR, Cum. Supp.*, 9017.

CHAPTER III

THE NWLB PRIOR TO DECENTRALIZATION

WAYNE L. MORSE:

"Would you agree with me that the War Labor Board operating under the late of national necessity during the war, had two interesting characteristics? In the first place, it was, of course, a court of compulsory arbitration; and, in the second place, it was an interesting type of legislative body in that we actually did legislate, in effect, if not in fact, in many of our decisions?"

WILLIAM GREEN:

"Yes, Senator. The War Labor Board found it necessary, I suppose, because of unforeseen economic developments which were presented for consideration, to go a long way, and, in fact, they became in some respects, in some instances, a real legislative body, and I presume their action was justified by the necessity of the situation."

—"Labor Disputes Act of 1946," Hearings on HB 4908, February 23, 1946, Sub-Committee on Education and Labor, U. S. Senate, 79th Congress, 2d Session (Washington: Government Printing Office, 1946), p. 130.

The National War Labor Board was not born to relax in ease and luxury. Its parent the National Defense Mediation Board had been poor in health and was at the door of death when the child was born. The infant inherited unfinished chores in a war world whose environment was much more difficult with which to cope than that of its predecessor. The living blood of the parent was given to the child when the employees of the National Defense Mediation Board and half of the NDMB's members were transferred by the birth certificate, Executive Order No. 9017, dated January 12, 1942. While still in swaddling clothes, the infant could sense the magnitude of the task before it. For whereas the parent had exercised jurisdiction over only 118 cases in nine months of existence, the child had 40 disputes certified to it in its first three weeks.¹

MEMBERSHIP

Executive Order No. 9017 created a National War Labor Board within the Office for Emergency Management. It was to be composed of twelve commissioners equally divided among representatives of industry, labor, and the public. All appointments to Board positions were to be made by the President, who would himself designate the Chairman and Vice-Chairman. The President was authorized to appoint an alternate member for each of the employer and employee members.

¹ H. L. Enarson to B. L. Gladieux, Bureau of the Budget, Memorandum, Subject: "Preliminary Hearing on the Program and Operations of the NLWB, February 13, 1942," dated February 17, 1942.

Alternates were to participate only in the absence of the regular members. Any tripartite group of six regular or alternate members constituted a quorum. Associate members to act as mediators were provided for by executive order less than two weeks after the Board was established.²

PROCEDURE

The Order creating the Board listed three stages in the settlement of disputes that might interrupt the war effort. First, the processes of collective bargaining were to be fully utilized. Thus the government's policy of encouraging direct negotiations was not to be diminished unnecessarily; this policy followed NDMB procedure. Throughout its history the NWLB constantly sought to reinforce direct negotiations between the parties at every conceivable opportunity. Second, the Order indirectly imposed upon the parties to a pending dispute the obligation to notify the United States Conciliation Service of their failure to agree. If mediation failed to effect a solution, the last state of settlement began. The NWLB was to acquire jurisdiction either upon its own motion or upon certification of a case by the Secretary of Labor. Initially, coordination and cooperation between the NWLB and the Department of Labor was greater than it had been during the life of the NDMB. The Conciliation Service's chief liaison officer with the NWLB had been the NDMB's temporary executive secretary in its early days.³ The offices of the NWLB were now located in the Department of Labor Building.⁴ And nine months of living with the same problems had brought improvements in techniques and methods.

JURISDICTION

In spite of the efforts of management to have the Order exclude issues of union security from the Board's jurisdiction and of labor to have the Order incorporate the principle of the "living wage," its preamble referred to the agreement of the Labor-Management Conference that "*All disputes shall be settled by peaceful means.*"⁵ However, paragraph 3 referred to "disputes which might interrupt work which contributes to the effective prosecution of the war." Thus under the original Order the inclusive nature of the preamble "all" was limited. However, this limitation was not long to exist. Executive Order No. 9250, dated October 3, 1942, in the first paragraph of Title III included the statement "the functions of said Board are hereby extended to cover all industries and all employees."⁶ Although Order 9250, as

² 3 *CFR, Cum. Supp.*, 9038, dated January 24, 1942.

³ Secretary of Labor, *Annual Report, For the Fiscal Year Ended June 30, 1942* (Washington: Government Printing Office, 1942), p. 22.

⁴ *Ibid.*, p. 7.

⁵ *Italics mine.*

⁶ 3 *CFR, Cum. Supp.*, 9250.

it affected the Board, was concerned primarily with *wages and salaries*, it was also interpreted to extend the Board's jurisdiction over *disputes* to "all industries and all employees."⁷ The War Labor Disputes Act of June 25, 1943,⁸ gave the NWLB statutory recognition, but did not alter its jurisdiction.⁹

NWLB-NDMB COMPARED

As finally constituted there were several differences between the parent NDMB and the child NWLB in regard to settling disputes—differences which enabled the child to live longer and to weather harder storms than those to which the parent succumbed. Executive Order 9017 read:

After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.

The NWLB's basic authority to settle disputes was conferred in this sentence, which exposes some differences between the two boards. First, the NDMB was to make "every reasonable effort to adjust and settle" disputes, whereas the NWLB was clearly ordered to "finally determine" them. Second, whereas the NDMB could request the parties to submit to voluntary arbitration, it could not prescribe it as the NWLB could. Third, the public members of the NDMB themselves sat on cases to mediate disputes; the public members of the NWLB did not themselves sit, but appointed special mediators or associate members for this purpose. Fourth, the NDMB had no choice, but had to wait until the Secretary of Labor certified a case before it acquired jurisdiction. The NWLB had authority to assume jurisdiction on its own motion. If it thought the Secretary of Labor delayed certification too long, it might act immediately. Fifth, the NDMB had been created without the active backing of industry and labor, but the NWLB had been agreed upon by the Labor-Management Conference. And, last, the times were different. This distinction between the two agencies becomes most important when one attempts to evaluate the "success" of the NWLB. Was it due to the "no strike" pledge or to the existence of the war? The NDMB operated in a period of crisis, it is true; but it was a period in which many loyal citizens were seriously questioning the wisdom of any defense program at all. The NWLB operated in a time of war, and the world-wide conflict must have had some effect on the basically loyal labor and industry leaders.

⁷ The National War Labor Board of the First World War had jurisdiction over controversies "in the field of production necessary for the effective conduct of the war" and also in other fields of national activity over "delays and obstructions which might, in the opinion of the National Board, affect detrimentally such production." See *National War Labor Board*, Bureau of Labor Statistics, Bulletin No. 287 (Washington: Government Printing Office, 1922), p. 13.

⁸ 57 U. S. Statutes 163.

⁹ *Term. Report*, p. 10.

With regard to disputes (as opposed to wage stabilization), there were also similarities between the two boards. Both were manned by essentially the same personnel—men who had firm, and at times almost fanatic, faith in unrestricted collective bargaining. This position prevented both agencies from ever being bound by precedent, although the NWLB approached *stare decisis* much more closely than the NDMB. Both agencies first attempted to mediate disputes, and when mediation failed resorted to fact finding and publicity. Neither agency had power to enforce its decisions and recommendations. Both could only inform the President of the facts and allow him to decide what action was appropriate.

The procedure of the NDMB had been to hold all its hearings in Washington before tripartite groups, although it occasionally appointed special agents to ascertain the facts in particular cases. The NWLB also used the tripartite system. Although it held some hearings in Washington, it adopted the general practice of sending tripartite panels into the field to urge settlement, to gather facts, and to prepare recommendations.

THOUGHTS OF FIELD OFFICES

Prior to its being given the job of wage stabilization, the National War Labor Board had no offices in the field. However, had it not been given the job of wage stabilization, it still would have created field offices. This decision was made in July 1942. The Administrative Officer of the NWLB requested Budget Bureau approval for four field offices to be located in Chicago, Seattle, San Francisco, and Cleveland. These locations were chosen because there was a concentration of disputes in these areas and because the Board had "members of its staff operating on a semi-continuous basis" in and around these cities. It was argued that if a small permanent field staff were to be maintained, savings in time and transportation costs would result.¹⁰ This initial request was not approved, because the Board was spending much of its time mediating. The Bureau of the Budget was not inclined to encourage duplication of Conciliation Service activities at a time when the Service was currently asking for more mediators. Several days later, the Board decided to withhold pressing its request for field offices, pending the assignment of wage stabilization duties.¹¹ Within the Board, however, Chairman Davis was being urged to press the original plan—first, because the case load was increasing rapidly, and second because "the experience of the men in these informal field offices would prove valuable if we should come to setting up regular field offices on

¹⁰ David H. Stowe to Wayne Coy, Bureau of the Budget, Memorandum, Subject: "Request of NWLB for Establishment of Field Offices," dated July 30, 1942.

¹¹ David H. Stowe to Byron Mitchell, Bureau of the Budget, Memorandum, Subject: "Field Offices, WLB," dated August 3, 1942.

a national scale."¹² At no time in this period, however, was it planned to establish "sub-War Labor Boards." The contemplated field offices simply represented an administrative convenience.¹³

EARLY DISPUTE POLICY FORMULATION

During these early days, the Board was busily engaged in deciding dispute cases. The case load had steadily mounted. The backlog grew. For the Board continued actively to encourage voluntary settlement, even when collective bargaining and Conciliation Service assistance had failed to achieve agreement.¹⁴ Indeed, it was the Board's insistence upon the parties' themselves settling their differences that made a policy based on precedent so difficult to attain. Internally and externally, the Board was encouraged to adopt general policy standards. George Kirstein, Executive Secretary of the NWLB, recognized that the Board's case load might become prohibitive unless the Board recognized that "disputes fall into certain broad categories and that if national policy can be established once and for all in this broad area, other disputes will fall into the general pattern."¹⁵ Dr. William Leiserson, a member of the National Labor Relations Board, criticized the NWLB because it had no guiding policy; and he "felt that deciding such broad issues as are now involved on the individual merits of each case will not suffice."¹⁶ Within the Bureau of the Budget, David H. Stowe and Wayne Coy urgently suggested the establishment of a war labor policy board.¹⁷ The proposed board was to adopt principles similar to those agreed upon by the War Labor Conference Board of World War I.¹⁸

But the Board did not adopt any general policy statements in these days. It chose to decide each case as it arose. It was not until August 24, 1942, in the *Norma Hoffman Case* that the Board was able to formulate the "complete version" of maintenance of membership which became standard.¹⁹ In several other cases, the Board had made partial

¹² Ralph Seward, Administrative Officer, NWLB, to William H. Davis, Chairman, NWLB, Memorandum, Subject: "Coming Administrative Problems," dated August 7, 1942.

¹³ Harold Enarson to D. H. Stowe, Bureau of the Budget, Memorandum, Subject: "Field Offices for the WLB," dated October 2, 1942.

¹⁴ H. L. Enarson to Byron Mitchell, Bureau of the Budget, Memorandum, Subject: "Mediation Work of the WLB," dated December 15, 1942.

¹⁵ H. L. Enarson to B. L. Gladieux, Bureau of the Budget, Memorandum, Subject: "Preliminary Hearing on the Program and Operations of the NWLB, February 13, 1942," dated February 17, 1942.

¹⁶ David H. Stowe to B. L. Gladieux, Bureau of the Budget, Memorandum, Subject: "Present Situation of the NWLB and the Need for the Determination of National War Labor Policies," dated February 23, 1942.

¹⁷ Wayne Coy to B. L. Gladieux, Bureau of the Budget, Memorandum, No Subject, dated February 25, 1942.

¹⁸ See *National War Labor Board*, BLS Bulletin No. 287 (Washington: Government Printing Office, 1922), pp. 9 ff.

¹⁹ William R. Frasca, "The Union Security Policies of the National War Labor Board: Maintenance of Membership," (Ph.D. Dissertation, Department of Economics, Fordham University, 1943), p. 45.

statements of its position, as had the NDMB before it.²⁰ Since the industry members often voted against maintenance of membership as a matter of principle,²¹ perhaps it is more accurate to state that a majority of the Board agreed upon the maintenance of membership provision.

THE ROOTS OF WAGE STABILIZATION

Even before it had formally and directly received the task of wage stabilization, the NWLB faced many perplexing problems involving wage issues and worked out many solutions. Less than three weeks after the Board was established, Congress passed the Emergency Price Control Act of 1942.²² Section 1(a) of the Act read:

It shall be the policy of those departments and agencies of the government dealing with wages . . . within the limits of their authority and jurisdiction, to work toward a stabilization of prices, fair and equitable wages, and cost of production.

The Board paid little attention to this law. In its first four months, wage policy in dispute cases was not emphasized. Board decisions did, however, lead to several objectives which have been summarized as:

1. The establishment of minimum standards of health and decency.
2. Reasonable protection of wage rates arrived at through collective bargaining.
3. Encouragement of negotiated increases to keep pace with the increase in living costs, except insofar as they might be inflationary.²³

The Bureau of the Budget at this time concluded that "the Board has condemned wage-rise spirals in words . . . and has raised wages with the knowledge that wage increases would force price increases."²⁴

The President, fearful of inflation, as early as March 16, 1942, had instructed the Director of the Bureau of the Budget to head a committee to formulate an integrated anti-inflation program. A month later, the committee urged the President to proclaim "a policy of stabilization of all wage rates above 40 cents an hour."²⁵ The President did not accept the recommendation, for only nine days later, on April 27, 1942, in his seven-point anti-inflation message to Congress, he stated:

To keep the cost of living from spiraling upward, we must stabilize the remuneration received by individuals for their work.

²⁰ *Term. Report*, p. 81. Also Footnote 3.

²¹ By April 1, 1944, the Board had rendered unanimous decisions on the issue of maintenance of membership in at least thirty-five cases. See Frank Graham's opinion in *Humble Oil and Refining Company Case No. 111-1819-D*. Quoted in *Term. Report*, p. 81.

²² 56 U. S. Statutes 23.

²³ Gwendolyn Stager Crawford, "The Evolution of the Wage Policy of the National War Labor Board" (Ph.D. Dissertation, Department of Economics, University of Virginia, 1944), pp. 8 f.

²⁴ Bureau of the Budget, "WLB Budget Hearing 1943 Estimate."

²⁵ U. S. at War, pp. 250 f.

The existing machinery for labor disputes will, of course, continue to give due consideration to inequalities and the elimination of substandards of living. . . .

Thus the Board was *informally* given the job of wage stabilization.²⁶ But what were "inequalities?" And what constituted "substandards of living?" These two terms were to live with the Board throughout its existence.

The day following the President's speech, Chairman Davis upon his own initiative wrote to the Secretary of Labor, the Chairman of the War Production Board, the Chairman of the War Manpower Commission, the Secretary of the Navy, and the Secretary of War to suggest an interdepartmental wage stabilization conference. Davis wrote:

In the interest of making progress quickly in settling a joint operating policy consistent with the President's broad declaration of policy, I should like to have your aid in formulating a program by which we can carry the responsibilities as to stabilization or adjustment of wages under the President's message.²⁷

For writing this letter, Davis was severely censured by several NWLB members. He had not cleared it with the full Board. The letter led to a series of interdepartmental wage conferences. A sub-committee composed of Chairman McNutt of the War Manpower Commission and of Chairman Davis of the NWLB was appointed to work out "recommendations of procedure for handling the wage stabilization problem."²⁸ From these discussions in May and June, the general criteria that later found their way into the Board's specific case opinions, into Congressional acts, and into executive orders were evolved.²⁹

By June 1942, the Board still had no specific formal standards on stabilization policy and conducted itself in accordance with past habits. It would adopt no general principles for its own guidance. In the middle of the month, the Office of Price Administration gave the Board some second-hand power. It ruled that no price increases would be granted because of wage increases, unless those wage increases had been approved by the National War Labor Board.³⁰

On July 16, 1942, the first comprehensive statement of the Board's position on wage control was set down in the opinion of George Taylor,

²⁶ President Roosevelt apparently had a penchant for imposing tasks informally. The National Labor Board was placed in approximately the same predicament between August 5 and December 16, 1933. See L. L. Lorwin and A. Wubnig, *op. cit.*, p. 93.

²⁷ William H. Davis, Chairman, NWLB, to Secretary of Labor, *et. al.*, Memorandum, Subject: "Implementation of the President's Policies on Wage Stabilization," dated April 28, 1942.

²⁸ Elizabeth McGaley to William H. Davis, Chairman, NWLB, Memorandum, Subject: "Wage Stabilization Conference," dated May 21, 1942.

²⁹ *U. S. at War*, pp. 196 f.

³⁰ G. S. Crawford, *op. cit.*, p. 9.

then Vice-Chairman of the Board, in the Little Steel Formula, which was often to make headlines. The formula permitted wage increases on a straight-time plant or unit wide average of 15 percent above its average on January 1, 1941. This was plainly a cost of living adjustment, since the cost of living had risen 15 percent during this same period. If the workers had already received a 15 percent adjustment, their arguments for increases could be based only on "inequalities" and "substandards." Taylor's opinion introduced two new phrases into the verbiage of wage stabilization. He referred to "numerous inequities in the wages paid"; and "gross inequities" were soon to become confused with "inequalities." He also referred to "wage rate adjustments"; "maladjustments" in the forthcoming authority of the Board came to mean a claim for wage increases based on the Little Steel Formula. The remaining basic phrase of wage stabilization, "effective prosecution of the war" had been used in Executive Order No. 9017, which created the Board. These words were soon to be written into law, executive order, and directives.

The Little Steel decision put the Board under much pressure from labor, because it limited wage increases, and from other governmental agencies, because they wanted more widespread wage stabilization.³¹ Davis bore the brunt of the pressure. He was Chairman of the organization that had no formal authority to do the job it had been given by a Presidential speech and that had jurisdiction only over dispute cases. In August he wrote Samuel Rosenman, Special Assistant to the President:

We are more and more impressed with the urgent necessity for prompt action to stabilize wages. We feel that if the discussion continues much longer increases will have been made which will make it impossible to stabilize wages within the limits of the anti-inflation program.³²

The Office of Price Administration had also been putting pressure on the White House. In early September in his Labor Day message to Congress, the President requested legislation to stabilize the cost of living. With Congressional authority, he could stabilize wages. "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes" was the result.³³

This Act, which was the authority for the Executive Order giving the Board jurisdiction over voluntary wage increases, read in part:

In order to aid in the effective prosecution of the war, the President is authorized and directed, on or before November 1, 1942, to issue a general order stabilizing prices, wages, and salaries, affecting the cost of living; and, except as otherwise provided in this Act, such stabilization shall so far as practicable be on the basis of the levels which existed on Sep-

³¹ *U. S. at War*, p. 263.

³² William H. Davis, Chairman, NWLB, to Judge Samuel Rosenman, Special Assistant to the President, Letter, dated August 10, 1942.

³³ 56 *U. S. Statutes* 765. October 2, 1942.

tember 15, 1942. The President may, except as otherwise provided in this Act, thereafter provide for making adjustments with respect to prices, wages, and salaries, to the extent that he finds necessary to aid in the effective prosecution of the war or to correct gross inequities.

No employer shall pay, and no employee shall receive, wages or salaries in contravention of the regulations promulgated by the President under this Act. The President shall also prescribe the extent to which any wage or salary payment made in contravention of such regulations shall be disregarded by the executive departments and other governmental agencies in determining the cost or expenses of any employer for the purposes of any other law or regulation.

The legislative standards given to the Board were thus exceedingly vague.³⁴

DEVELOPMENT OF THE EXECUTIVE ORDER

The Act did not prescribe the agency that was to administer the wage stabilization policy. However, the problem had been under consideration by the Budget Bureau since May. At that time, the Wage and Hour Division of the Department of Labor was considered because it was experienced in the enforcement of wage policies and because employers were accustomed to dealing with it.³⁵ The United States Conciliation Service was also considered. But John R. Steelman, at that time Director of the Service, thought that the assumption of the wage stabilization function might destroy the future usefulness of his organization by destroying its reputation for impartiality.³⁶ Steelman recommended that the NWLB be given the job. The rejection of the Wage and Hour Division and of the Conciliation Service was wise. The whole *raison d'être* of the Fair Labor Standards Act and of the personnel accustomed to administering it was to raise wages; whereas the basic tenets of stabilization were to prevent indiscriminate wage increases. The Conciliation Service drew its greatest strength and popular acceptance from the fact that it had no policy, nothing to sell, no ax to grind. It had no administrative duties. And its personnel was chosen for mediating rather than administrative ability.

In early August Chairman Davis received from Judge Samuel Rosenman in the White House the text of a proposed executive order on

³⁴ These standards may well be contrasted with those given to the Railway Labor Board by the Transportation Act of 1920, where the Board was to determine "just and reasonable" rates; several factors which the Board was to take into consideration were included in the Act. See Harry D. Wolf, *The Railway Labor Board* (Chicago: University of Chicago Press, 1927), p. 94.

³⁵ B. L. Gladieux to the Director, Bureau of the Budget, Memorandum, Subject: "1943 Estimate for NWLB," dated May 27, 1942.

³⁶ Harold Enarson to Byron Mitchell, Bureau of the Budget, Memorandum, Subject: "Meeting with Steelman, Director of Conciliation Service," dated August 12, 1942.

wage stabilization.³⁷ Davis was asked to go over the order and make suggestions and corrections. The order had been prepared by Rosenman and Isador Lubin, also in the Executive Office of the White House, after consultation with the Bureau of Budget staff.

EXECUTIVE ORDER 9250

The Executive Order that finally gave the National War Labor Board jurisdiction over wage stabilization was No. 9250, dated October 3, 1942. The Board now had authority to approve increases and decreases in wage rates paid by *all* employers, even if the rates were not in dispute. The Board gave the name "voluntary cases" to those requests for wage increases that were not objected to by either labor or management. Selected portions of the Order that gave the Board its authority over wages and that allowed some exceptions to a wage "freeze" were:

No increases in wage rates, granted as a result of voluntary agreement, collective bargaining, conciliation, arbitration, or otherwise, and no decreases in wage rates, shall be authorized unless notice of such increases or decreases shall have been filed with the National War Labor Board and unless the National War Labor Board has approved such increases or decreases.

The National War Labor Board shall not approve any increases in the wage rates prevailing on September 15, 1942, unless such increase is necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

The National War Labor Board shall, by general regulation, make such exemptions from the provisions of this title in the case of small total wage increases or decreases³⁸ as it deems necessary for the effective administration of this Order.

The policy of the Federal Government, as established in Executive Order No. 9017 of January 12, 1942, to encourage free collective bargaining between employers and employees is reaffirmed and continued.

Except as modified by this Order, the National War Labor Board shall continue to perform the powers, functions, and duties conferred upon it by Executive Order No. 9017, and the functions of said Board are hereby extended to cover all industries and all employees. The National War Labor Board shall continue to follow the procedures specified in said Executive Order.

³⁷ William H. Davis, Chairman, NWLB, to Samuel Rosenman, Special Assistant to the President, Letter, dated August 4, 1942.

³⁸ The words "or decreases" were eliminated by Executive Order 9381 of September 25, 1943; for these purposes the Order did not otherwise affect the Board's authority under 9250.

The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this Order, or the directives on policy issued by the Director under this Order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this Order, and to avail itself of the services and facilities of such State and Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board.

It will be noted that the standards upon which the Board might approve increases in wage rates were limited to the old friends maladjustments, inequalities, substandards, gross inequities, and effective prosecution of the war.

This same Executive Order also set up within the Office for Emergency Management the Office of Economic Stabilization. The Director of Economic Stabilization was instructed to formulate a "comprehensive national economic policy" and to implement it by issuing "directives on policy to the Federal departments and agencies concerned." Although Davis had been consulted about the framing of Executive Order 9250, he had received only the part of the order that dealt with wage and salary policy and administration. Lubin indicated that the President had wanted the rest of the Order kept secret.³⁹

THE REACTION OF THE NWLB

The first morning after the Order was issued the Board discussed the possible implications of the Director's part in NWLB activities. Most members of the Board were highly indignant. The Board had previously been a free agent. If the President had not trusted the Board, why had he not said so? Why take such an "underhanded" method of conveying his displeasure? The Board had great pride. The pride was wounded. Threats of resignation if the Director attempted to tell the Board it must send cases to him for approval or to tell it how to decide a particular case filled the air. The Board was particularly disturbed over the paragraph which read:

The Director may perform the functions and duties and exercise the powers, authority, and discretion conferred upon him by this Order through such officials or agencies, and in such manner, as he may determine. The decision of the Director as to such delegation and the manner of exercise thereof shall be final.

Experience proved that the Board's anxiety was needless. Although on several occasions the Director did issue orders to the Board, it was strong enough to force him to "interpret" these orders in a manner that

³⁹ Isador Lubin, Executive Office of the President, to William H. Davis, Chairman, NWLB, Letter, dated September 17, 1942.

practically negated their existence and that "saved face" for both the Director and the Board.

Sanctions for the violation of its wage stabilization provisions were also provided for in Executive Order 9250. It read:

In order to effectuate the purposes and provisions of this Order and the Act of October 2, 1942, any wage or salary payment made in contravention thereof shall be disregarded by the Executive Departments and other governmental agencies in determining the costs or expenses of any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942 or any maximum price regulation thereof, or for the purpose of calculating deductions under the Revenue Laws of the United States or for the purpose of determining costs or expenses under any contract made by or on behalf of the Government of the United States.

SUMMARY

With the passage of the "Act to Amend the Emergency Price Control Act of 1942" and the issuance of Executive Order No. 9250, the National War Labor Board had stumbled to its puberty. Although it would grow and spread and develop, the Board now had all the basic power it was to exercise during its life. It could exercise jurisdiction over any labor-management conflict within the forty-eight states and territories of the United States. And it could prevent any inflationary wage increases. By now the Board had power to act. It also had the good wishes of the public and of the American Federation of Labor whose convention in November of 1942 "approved the organizational structure and the work of the War Labor Board and recommended that the . . . Board be made the 'top agency' on all wage policies and issues arising under the Anti-Inflation Act and the President's executive order."⁴⁰

At the maturity of its power, the National War Labor Board may best be compared to the independent regulatory commissions. Although the Board was subject to direction from the Director of Economic Stabilization, this power was so seldom exercised that Professor Cushman might have been soothsaying when he wrote:

The commissions are not clearly aware to whom they are accountable nor are those to whom they are accountable sharply aware of their own position in the matter.⁴¹

As finally constituted, the National War Labor Board had four basic functions to perform. Later, when the regional boards were mature, they faced these same problems. First, the Board was to decide

⁴⁰ *American Federationist*, November 1942, p. 12. Quoted in "The Attitude of the A.F. of L. toward the War Labor Board," a ten page monograph in the NWLB Historian's file, National Archives.

⁴¹ Robert E. Cushman, *The Independent Regulatory Commissions* (New York: Oxford, 1941), pp. 694 f.

dispute cases. Second, it was to achieve conformance with its directive orders in dispute cases. The Board called this function "compliance." Third, it was to stabilize wages through its authority to approve increases and decreases in all wage rates. Fourth, it was to achieve conformance with its wage stabilization principles. The Board called this function "enforcement," as distinguished from the "compliance" in dispute cases.

These four basic functions—dispute settlement, compliance, wage stabilization, and enforcement—were to be administered by the Board until the end of the war. By October 1942, the National War Labor Board had grown to its legal potentiality, but it had not begun to exploit it. The trials and tribulations of three war years were yet to plague the Board. The ever-increasing case load and the accompanying responsibility forced it to beget off-spring—the regional war labor boards and the commissions for particular industries.

CHAPTER IV

GRASS ROOTS AND GROWING PAINS

Perhaps the greatest single factor which contributes to the difficulties encountered is the failure to do a thorough job of organization planning at the outset, and to recognize that planning in most management situations is a continuous process; that in many agencies even the so-called "old line" activity is constantly changing and cannot be planned and arranged once and for all for the entire life of the organization.

—L. C. Gibson, "The Establishment of a New Field Organization," in Bureau of the Budget Field Service, Field Service Training Institute, Management Techniques, January 25-February 3, 1945, Unpublished, Budget Bureau Library, pp. iv-30.

I think this Board has no concept yet of the extent of delegation that it has to do in order to make this thing operate. . . . As we are set up now, I think we haven't begun to delegate what this Board has to delegate.

I think we have to change. We have to reorient ourselves a good bit. We have been a tight little country club up to this time, where everybody knows every detail as to what is happening, and we could keep a pretty good control in our own thinking about things. I think that the organization is going to spread.

—George W. Taylor, Vice-Chairman, NWLB, Verbatim Transcript, Executive Session, November 17, 1942, pp. 23 f.

When a government agency acquires new authority to act, its operating problems are increased and aggravated. Indeed, any change in extra-agency policy throws administrative activity nearer to chaos. The new is the unknown. And the unknown breeds fear and confusion. In peacetime, the policies carried out by an administrative agency do not change rapidly. A mature agency, during peace, is better equipped to handle unanticipated changes. Basic organization and policies have been established. Occasional alterations can, therefore, be absorbed with a minimum of disturbance. Speed of action, though preferable, is not necessarily of prime consideration to effective action. In wartime, the policy carried out by a government agency is likely to change quickly and often. The tempo of modern war does not allow the agency an opportunity to become mature. Organization is not well established before change of policy requires its alteration. Speed of action becomes of primary importance. War moves fast, and administrative activities must keep pace.

Whether it be in Washington or in the field, an agency's early days are its most hectic and its most important. For the past colors the future. Solutions to pressing problems are found through informal assignment that develops into informal organization. When formal organization is achieved, the informal pattern that has preceded it often interferes with the effectiveness of the formally established structure. A planned organization is less likely to be caught in the web of its

development than an unplanned one. But planning requires time for thought, accurate knowledge of the past, and a reasonable anticipation of the future. The speed of war makes planning at the same time both more difficult and more important.

Although the National War Labor Board had matured to its full power with the issuance of Executive Order 9250,¹ its organizational structure was still undeveloped. Prior to its reception of the wage stabilization function, the Board had considered setting up four administrative offices in the field. These plans were discarded because the Board anticipated the wage stabilization authority and the consequent necessity for a more complete plan of decentralization.

Immediately following the Executive Order of October 3, 1942, the Board almost assumed the necessity for field offices. Office space in Washington was not sufficient to house an adequate wage stabilization staff. Personnel was not available in the area. Transportation expenses to and from the capital were great. Time for transmission of mail to and from Washington would greatly delay the processes of action. The Board's "customers," the parties affected by wage stabilization, would not feel close to the Board. On October 6, 1942, the NWLB unanimously resolved to set up a tripartite committee on decentralization.

In facing the future, the NWLB simultaneously had two fundamental problems. First, the economic jurisdiction of the Board had to be considered. Second, the number, geographic areas, and types of field offices must be determined. In its early days, the Board intermittently discussed these problems. For purposes of exposition, they are discussed separately without strict regard for chronological order.

EXTERNAL LIMITATIONS ON NWLB ECONOMIC JURISDICTION

Executive Order 9250 itself limited NWLB jurisdiction over wages and salaries. Paragraph 2 of Title III authorized the NWLB "to carry out the *wage* policies stated in this Order, or the directives on policy issued by the Director under this Order."² Title II, in setting up the reasons for which the Board might grant exceptions to the rule of "no increases in wage rates," applied only to wages. Provisions for increasing *salaries* over \$5,000 were not included in this Order.³ However, on October 27, 1942, the Board acquired jurisdiction over all salaries paid to persons represented by a union and over all salaries, under \$5,000 per year, which were not paid to executive, administrative,

¹ The War Labor Disputes Act later gave the Board statutory authority to act in dispute cases, but the Act did not change the nature or extent of the Board's powers. 57 U. S. Statutes 163.

² *Italics mine.*

³ The Order defined salaries as "remuneration for personal services *regularly* paid on a weekly, monthly, or annual basis." Wages thus became remuneration for personal services *regularly* paid on an hourly or daily basis.

or professional earners.⁴ This authority was conferred by the Regulations of the Director of Economic Stabilization.⁵ While less than a month old, the NWLB's economic jurisdiction had been extended.

The Act of October 2, 1942, and the Executive Order issued the following day excluded from NWLB authority those wage adjustments that would interfere with the administration of the Fair Labor Standards Act, the Walsh-Healey Act, the Davis-Bacon Act, and the National Labor Relations Act. Executive Order 9299⁶ and subsequent regulations of the Director of Economic Stabilization excluded from the jurisdiction of the Board wage adjustments for railroad workers falling under the National Railway Labor Panel, for employees of the United States and of the District of Columbia whose salaries were fixed by statute, and for farm workers who earned less than \$5,000 per year and who thus fell under the authority of the War Food Administration (later the Department of Agriculture). Thus approximately 32,000,000 workers, 15,000,000 in manufacturing industries and 17,000,000 in non-manufacturing industries, were subject to the jurisdiction of the National War Labor Board before it began circumscribing its own jurisdiction.⁷

SELF-LIMITATIONS ON JURISDICTION

The techniques used by the National Board to narrow its own general jurisdiction and that of its agents were four.⁸ First, by General Order No. 4, adopted October 9, 1942, the Board relinquished its authority to approve voluntary wage adjustments made by businesses that employed no more than eight workers.⁹ By this General Order 4,000,000 wage earners were exempt from the Board's jurisdiction.¹⁰ Second, a series of general orders provided that individual adjustments in wage and salary rates might be made without approval of the NWLB. Such individual adjustments were limited to those made in accordance with an established schedule and to those made for one of several reasons such as reclassification, length of service, or increased productivity under a piece rate system.¹¹ Third, the Board authorized other agencies of government to rule initially on applications for wage increases that covered their own civilian employees whose salaries were

⁴ Exemptions from jurisdiction of the Board of executive, administrative, and professional employees earning salaries under \$5,000 a year conformed to the jurisdiction of the Fair Labor Standards Act.

⁵ 32 *CFR, Cum. Supp.*, 4001.2.

⁶ 3 *CFR, Cum. Supp.*, 9299.

⁷ *Term. Report*, p. 538. Also see Footnote 3. The estimate of 32,000,000 workers was made for the midpoint of the stabilization period, March 1944.

⁸ Since these self-limitations on jurisdiction were not limited to the chronological period under discussion in this chapter, they are but tersely indicated here.

⁹ 29 *CFR, Cum. Supp.*, 803.4.

¹⁰ *Term. Report*, p. 783.

¹¹ 29 *CFR, Cum. Supp.*, 803.5, 803.9, and 803.31.

not established by statute.¹² Fourth, the NWLB created a number of commissions, which were responsible for wage and salary adjustments in certain industries within designated areas.¹³ These commissions were directly responsible to the National Board and usually exercised the same powers within their industrial jurisdiction as the future regional boards exercised within their territorial jurisdiction. The region's territorial jurisdiction did not extend to industries under the jurisdiction of the commissions.

OBJECTIVES OF DECENTRALIZATION PLANS

While the economic jurisdiction was being carved out, the Board contemporaneously faced the problem of the manner in which it should decentralize. At its second meeting after the issuance of Executive Order No. 9250, the Board discussed its general aims in handling the voluntary wage program and decentralization.¹⁴ The NWLB at this time seemed intent on not creating a "large bureaucratic organization." Since the Board was composed of men who until relatively recently had been acquainted with the government only as citizens subject to its regulations, there was a consensus on several general objectives. The staff should be kept exceedingly small. The public should have few forms to fill out. Policy should be set forth in clear and concise terms capable of being understood by NWLB clientele. George Taylor, at this time Vice-Chairman, pointed out the relationship between the size of the organization and the ease with which its policies could be applied.

The question of whether or not you have a bureaucracy depends very largely upon the intelligence and ability of this Board to set forth its wage policy in clear, concise terms that can be automatically applied. If there is a lot left to discretion, you're going to have a bird.¹⁵

By these standards, the Board was bureaucratic, and there was an aviary.

THE FIRST PLAN

The Board itself discussed only one plan of decentralization, in addition to the one finally adopted. At its first meeting, the tripartite committee on instructions tersely considered assigning about sixty employees of the National War Labor Board to the field offices of the

¹² See, for example, G. O. No. 14 delegating such power to the Secretary of War, 29 *CFR*, *Cum. Supp.*, 803.14.

¹³ 29 *CFR*, 1944 *Supp.*, Appendix.

¹⁴ NWLB, *Verbatim Transcript*, Executive Meeting, October 7, 1942, pp. 260 f. Hereinafter cited simply as *Verb. Trans.* Some documents in this same series are entitled *Verbatim Transcript*, Executive Session; the content is the same, and the difference is apparently unintentional. *Verb. Trans.* will apply to both. In the later days of the Board, when it often met in several alphabetical divisions, there are two or more transcripts of the same date. In such instances, the document will be cited as *Verb. Trans.*, Div. A, or *Verb. Trans.*, Div. B, whatever the case may be.

¹⁵ *Verb. Trans.*, October 7, 1942, p. 267.

Office for Emergency Management and of the Wage and Hour Division of the Department of Labor. These employees would pass on applications for wage increases. In addition, the committee considered having ten regions superimposed over these district offices. At the regional level a tripartite agent would hear appeals.¹⁶ But this initial plan came to naught, despite its conformity to the general agreement that the Board should use the services of available government agencies where possible, rather than create independent facilities.¹⁷

THE PERKINS PROPOSAL

The Secretary of Labor in a memorandum addressed to Chairman Davis, but delivered to the Bureau of the Budget, suggested that the NWLB use the staff and facilities of the Wage and Hour Division, rather than engage a staff of its own. The Board was to issue a set of orders under which the regional directors of the Wage and Hour Division were to act. Appeal would lie from the regional directors to the National Board itself. The Division already had authority to hold hearings and had available reports from questionnaires on wages and cost of living conditions; it might also effectively utilize the materials in Bureau of Labor Statistics offices.¹⁸ The suggestion of the Secretary was not known to the Board until it had already decided to use the Wage and Hour Division's district offices as "informational centers" only. When the Secretary was approached with this suggestion, her memorandum became known. The Secretary indicated that she thought the Budget Bureau would forward her memorandum to the Board. At this meeting, Miss Perkins thought the Board should set up no local machinery of its own. The Secretary thought that there were not ten men in the United States capable of performing the job the Board had planned for its regional directors, and that therefore a waste of manpower would result. She was also opposed to the establishment of tripartite appeal boards.¹⁹

The Perkins proposal is understandable. Even in normal times administrative organizations have a tenacious tendency. But these were war times, and governmental agencies sought war jobs in order to keep their appropriations and their personnel. In the tight labor market, the Wage and Hour Division inspectors had relatively few problems in getting employers to pay a minimum wage of forty cents and time-and-a-half for overtime. In addition, the offices were already in operation and had a basic core of personnel to man them.

But to the National War Labor Board, the Perkins proposal was not understandable. The Secretary's head was placed on the block of

¹⁶ *Verb. Trans.*, October 7, 1942, p. 265.

¹⁷ *Verb. Trans.*, October 6, 1942, pp. 42 f.

¹⁸ The Secretary of Labor to William H. Davis, Chairman, NWLB, "Memo on the Wage Stabilization Program," dated October 19, 1942.

¹⁹ *Verb. Trans.*, October 23, 1942, pp. 557, 560, 562, 569.

the debate guillotine and was verbally severed. In rejecting the Perkins proposal, the discussion was more emotional than logical. Whether this marked antipathy to the plan was due to the memorandum being sent directly to the Bureau of the Budget, or whether it was due to the Board's intense jealousy of its prerogatives and to its belief that the Secretary was trying to usurp its functions, is impossible to determine. Because the staff of the Wage and Hour Division was generally oriented to raising wage rates, whereas the Board's staff should have been more oriented toward preventing increases in wage rates, rejection of the Secretary's plan was wise.

Within the Board there was limited opposition to any use of Wage and Hour Division offices. Robert Watt, an AFL representative, objected because he thought use of the Division might lead to its making policy for the Board.²⁰ George Meany, another AFL member, objected on the grounds that the Division would be responsible for personnel actually working for the Board and that this situation might lead to the disadvantage of divided responsibility.²¹ The Executive Secretary of the Board argued that since the Division would need more employees to handle this additional chore, the Board itself, with the assistance of OEM and the Civil Service Commission, might as well do the hiring.²²

THE GARRISON COMPROMISE

It was Lloyd Garrison, at that time Executive Director of the NWLB, who convinced its members of the advantages of using the Division's facilities for informational services, though not for final decision-making.

That leads us back to the question of the Wage and Hour Division or some already established set of offices where these myriads of small clients could go, and tell their little stories, and have somebody who understands something about industry and labor extract it from them and get it down on these forms. They will need somebody to hold their heads and make sure the thing is in there.

It just occurred to me, to the staff, that the Wage and Hour Division offices are probably the best for doing that sort of thing. They are equipped with stenographers, they have space, and they know industry, and there they are.

[A Wage and Hour employe] can make a little ruling which he can give him on a piece of paper, which is official, and that settles the damn thing. It is at that level of very simple "Yes" and "No" answers that it seems to me the Board might well take a chance on the Wage and Hour Division and make some mistakes. They will tell some employer some time that he is exempt when he isn't, and there will be a mistake made.

²⁰ *Verb. Trans.*, October 20, 1942, p. 132.

²¹ *Verb. Trans.*, October 21, 1942, p. 338.

²² *Ibid.*, p. 335.

Those can be corrected by our having a scrutiny of every little ruling they make. . . .

If they are in doubt at all, they will be instructed to send it to the regional representative of the WLB, who will make the rule. Something has got to be done on a mass production scale, I think, to work.²³

Largely as a result of Garrison's insistence, the Board several days later approved a plan to create its own regional offices to process all applications for wage increases. The regional, branch, and field offices of the Wage and Hour Division were to give information to the public and to check the application forms to see that they were properly and adequately filled out.²⁴ On the following day George Taylor announced a general agreement with the Division, which had called in its regional directors for instructions.²⁵ On October 27, Taylor announced formal agreement with the Department of Labor,²⁶ although the Secretary was said to have "acquiesced" rather than "approved."²⁷

ORIGINAL AREAS AND OFFICES

Meanwhile, the staff of the Board had been active in planning regional boundaries and headquarters cities. Initially, the Bureau of the Budget had urged a duplication of OEM's geographical areas and locations.²⁸ By using these districts, the NWLB could more easily avail itself of the facilities of the Central Administrative Services Division of OEM. This choice of areas proved wise because the CAS field offices were most valuable to the regional directors in setting up their own offices. On October 20, 1942, the decision to adopt OEM's regional boundaries and headquarters cities was made.²⁹

ORGANIZATION AND PROCEDURE

On the same day that the Board achieved formal agreement with the Department of Labor for use of the Wage and Hour Division, it adopted a "Procedure in Cases of Voluntary Applications to National War Labor Board for Wage Adjustments by Private Employers." It should be noted that thus far the Board had considered only the decentralization of its wage stabilization duties. The Procedure indicated the use of Wage and Hour offices, established the position of regional director, and created a regional advisory board for each region.

²³ Lloyd Garrison, *Verb. Trans.*, October 20, 1942, pp. 137 f.

²⁴ *Verb. Trans.*, October 23, 1942, p. 584.

²⁵ *Verb. Trans.*, October 24, 1942, p. 743.

²⁶ *Verb. Trans.*, October 27, 1942, p. 8.

²⁷ *Ibid.*, p. 9.

²⁸ "Meeting of Dr. Taylor with Representatives of the Bureau of the Budget," A verbatim transcript, October 8, 1942.

²⁹ *Verb. Trans.*, October 20, 1942, pp. 65 ff. A more detailed discussion of the problems of regional boundaries and headquarters cities and changes from the original scheme is included in Chapter V.

Oddly enough, the Board's "Administrative Officer was not aware of the character of the Board's decentralization plan until after it was announced [to the public]. This official was preparing a budget based on a different decentralization plan."³⁰

SELECTION OF REGIONAL DIRECTORS

By the latter part of October, the plans for decentralization had crystallized to the extent that the Board began selecting people to direct its field offices. The NWLB agreed to three principles to guide it in its selection of regional directors. First, those chosen should be men of standing in their community. Second, they should be persons whose loyalty to and sympathy with the Board was unquestioned. And, third, they should not be chosen under Congressional pressure.³¹

The Board was more successful in applying the latter two principles than it was the first. Original recommendations of persons to serve in the capacity of regional directors were made by Carroll R. Daugherty, Chief of the Review and Analysis Division.³² Since those appointed were to be loyal to and acquainted with the Board's program, most persons recommended and subsequently appointed had seen Board service. Most were employed in a mediatory capacity.³³ Most were employed in the Board's Washington office.³⁴ Most were young, in their very early thirties. The Board sent out mediators to do an administrative job. Although the functions of mediation and administration are not necessarily incompatible, neither are they necessarily compatible. On October 27, 1942, acting regional directors for eight of the ten regions were chosen, and the Board authorized its public members to fill the positions in the other two regions.³⁵

THE REGIONAL ADVISORY BOARDS

In addition to having a regional director, each of the National War Labor Board's ten regions had a regional advisory board. Chairman Davis envisaged three purposes of these boards. First, they were to serve in an advisory capacity to the regional directors. Second, since they were tripartite in character, they would be representative of the National Board and also representative of the interests coming before the Board. Third, since they were to be selected locally, they were

³⁰ Harold L. Enarson to The Assistant Director, Bureau of the Budget, Memorandum, Subject: "Key Factors in the Handling of Labor Disputes and the Administration of the Wage Stabilization Program," dated January 3, 1943.

³¹ See *Verb. Trans.*, October 20, 1942, pp. 69 f. and *Verb. Trans.*, October 23, 1942, pp. 600 ff.

³² Carroll R. Daugherty to Board, Memorandum, No Subject, No date.

³³ Harold Enarson to David H. Stowe, Bureau of the Budget, Memorandum, Subject: "The War Labor Board as an Administrative Device," dated November 3, 1942.

³⁴ The apparent incompatibility of "decentralizing" by sending out to the field employees from the national office is discussed in Chapter VI.

³⁵ *Verb. Trans.*, October 27, 1942, pp. 27 f.

to provide "understanding of the local problems, and the sentiment of the local community, the region."³⁶ Regional Director Saul Wallen explained the relation of the regional director to the regional advisory board in the following terms:

Actually the way it is going to work is this, to be perfectly practicable. I will get a case and look it over. My mind isn't going to be a perfect blank on it; I am going to feel a certain way and have an opinion on it, and I am going to come in here and say, "Gentlemen, I have looked this over, and from the examination I have made, I haven't come to a final decision, but my opinion on this case is this and this and this. What do you think?"

Then you can go to work on it and kick it to pieces and if you kick hard enough you will completely change my mind. I am inclined to think—I am modest enough to believe that if all twelve of you say I am drunk, I had just better lay down. On the other hand, if it is a pretty close question and I can't get the feeling of the weight of opinion of this body, I may just have to go off on my own and take the full responsibility for the final decision.³⁷

Actually, the substantive functions of the regional advisory boards were never well thought out at the National Board level and remained fuzzy throughout the short time of their existence.

Each regional advisory board was composed of twelve members, four representing each of the three groups—labor, industry, and public. Only six members, divided equally among the three constituent units, was a quorum. The four members of each group were to arrange their service so that their unit would always be represented.³⁸ Chairman Davis originally wanted two persons from each group to represent each state,³⁹ but the impracticability of working with a group as large as fifty was pointed out. George Taylor, Vice-Chairman, suggested the possibility of an executive committee acting for each regional advisory board, so that its membership could encompass large numbers. But his idea was discarded when the suggestion of tripartite representation from each state was abandoned.⁴⁰

Originally the Board decided to designate all public members as "alternate chairmen."⁴¹ The idea of allowing the regional directors to preside at the meetings was considered, but rejected. However, when the Board approved a letter to the members of the regional advisory boards, its words were: "The Chairman of the Board will at all times be a public member serving by rotation or otherwise as your Board

³⁶ *Verb. Trans.*, November 18, 1942, pp. 288 f.

³⁷ Region I, "Meeting of Advisory Council to the Regional Director of the War Labor Board," *Verbatim Transcript*, December 11, 1942, pp. 21 f.

³⁸ *Verb. Trans.*, November 18, 1942, p. 308.

³⁹ *Verb. Trans.*, October 27, 1942, pp. 13 f.

⁴⁰ *Ibid.*, p. 27.

⁴¹ *Verb. Trans.*, November 18, 1942, p. 290.

may determine."⁴² The proposal for "alternate chairmen" was thus dropped without discussion.

In selecting members for regional advisory boards, each group at the national level actually chose the members of the corresponding group at the regional level. Although in approving a press release the members were said to have been "nominated by their groups and approved by the board," the action of the Board itself was perfunctory.⁴³ The labor and employer groups located prospective members through their own private resources. The public members were aided in choosing the public regional members by the regional directors who were in the field setting up their offices. On November 18, 1942, the Board completed the approval of members of the regional advisory boards.⁴⁴ Four days later this list and a list of regional directors was made public.

The regional advisory boards never functioned effectively. The scope of their operation was exceedingly narrow and their power limited. Nor did they survive long enough to rise to the height of their possibilities. Two months after they were announced to the public, the National War Labor Board reorganized and established a group of regional war labor boards with jurisdiction over both voluntary and dispute cases. The attitude of most regional advisory board members was summed up as:

Personally I am impatient . . . but I feel we are wasting an awful lot of time. This is our fifth meeting and at every meeting we sit down and discuss organization, and it is an endless subject. . . . I feel we are wasting a lot of time right now. We have been reviewing here matters that we have discussed. The matter has been submitted to us in writing, and we have discussed it at previous meetings, and we are just covering the same ground again.⁴⁵

APPEALS PROCEDURE UNDER THE R.A.B.

The Board's "Procedure in Cases of Voluntary Applications to National War Labor Board for Wage Adjustments by Private Employers," which set up the regional directors and regional advisory boards, also provided a system of appeals to the national level, if an application had been denied in whole or in part by the region. As originally conceived, appeal would have been automatically granted when the application involved 200 or more employees. If it involved fewer than 200 employees, "extraordinary cause" was to have been shown.⁴⁶ Also as originally conceived, an employer could make no

⁴² *Verb. Trans.*, November 19, 1942, p. 518.

⁴³ *Verb. Trans.*, November 18, 1942, pp. 286 f.

⁴⁴ *Ibid.*, p. 310.

⁴⁵ Winthrop Carter, Industry Member, Region I, "Meeting of Advisory Council to the Regional Director of the War Labor Board," *Verbatim Transcript*, January 21, 1943, p. 12.

⁴⁶ *Verb. Trans.*, October 20, 1942, p. 252.

more than one application for a voluntary increase every six months; the Wage and Hour Division had the power to waive the rule in exceptional cases. However, this effort to limit the caseload of the Board was stricken from the final draft.⁴⁷ As finally adopted, the applicant, if his application had been rejected in whole or in part, could appeal for review by a tripartite panel of the Washington office. If the panel also disapproved, the action was final—except that the National Board might review on its own initiative and that a member of the panel might petition the Board to review. Where price relief was involved, final action on the case was to be withheld until the final approval of the Director of Economic Stabilization was secured.

ORGANIZING AND STAFFING THE REGIONAL OFFICES

After the acting regional directors were chosen on October 27, 1942, they were sent to the field to set up their offices. The Board made an effort to place the directors in the localities with which they had experience or about which they had knowledge. The Central Administrative Services Division of OEM assisted the directors in getting office space and provided them with some office supplies. The fact that the Bureau of the Budget would not release the funds for regional offices until the Board finally adopted its Procedure hampered the early activities of the directors.⁴⁸ Actually, they borrowed from OEM funds, until their own were available.

Recruiting a staff presented the regional directors with their greatest problem in setting up the regional offices. The directors had been in the field for about three weeks before they received authority to hire. At the National Board level, two extreme positions on hiring procedure were voiced. On the one hand it was argued that the Board should delegate complete and unlimited hiring authority to the regional directors. This position was substantiated on the grounds that since the directors would be judged by the ability of their staffs, they would exercise caution and discretion.⁴⁹ Because the biggest current job of the Board was to get the offices in operation, complete delegation of authority was the most expedient method.⁵⁰ If the Board had complete confidence in the directors, the suggestion of unlimited delegation would indicate it. On the other hand, it was suggested that the Board approve all appointments made by the directors before they became effective.⁵¹ A compromise between the two positions resulted.

The final resolution of the Board was adopted in part because George Taylor, Vice-Chairman, assumed authority and in part because it was

⁴⁷ *Verb. Trans.*, October 21, 1942, pp. 379 f.

⁴⁸ Carl Schedler, Deputy Executive Director, NWLB, "Memo to the Public Members of the Board," dated November 7, 1942. *Verb. Trans.*, November 17, 1942, p. 20.

⁴⁹ *Verb. Trans.*, November 17, 1942, pp. 43 ff.

⁵⁰ *Ibid.*, p. 6.

⁵¹ *Ibid.*, p. 17.

similar to the National Board's hiring procedure. One morning when the Board convened Taylor announced, "In the urgency of getting these regional offices set up I have authorized action for hiring some people out in the field who can work with the officers."⁵² Taylor's instructions allowed the directors to hire economists with the approval of the Chief of the Review and Analysis Division in Washington and attorneys with the approval of the General Counsel in Washington.⁵³ Approval of the National Board itself was not necessary. Board members, however, did not want to allow the directors such extensive power, since they were conscious that the NWLB would be judged partially by the success of its field offices. It was suggested that the directors be given authority to hire with the approval of the regional advisory boards, but this idea was discarded when it was pointed out that the regional advisory boards were not yet in existence and had not yet been organized.⁵⁴ In order to resolve the differences, a Board Committee on Procedure for Hiring of Staff Personnel was appointed.

At this time National Board personnel who earned \$3,800 or more were approved by the Board itself, but those who earned less might be hired by the division heads. The recommendations of the Committee were similar to the National Board practice. It suggested that regional office employees who were to earn \$3,800 (P-4 or CAF-11) or more would be selected by the directors, but subject to the approval of the appropriate division head in Washington. Procedure for hiring employees at rates under \$3,800 was to be worked out by the administrative staff. "Regional directors and sub-directors and assistant directors and assistant sub-regional directors will be appointed by the Board."⁵⁵

With these rules adopted, the directors could begin hiring. But before they could proceed very far, they had to know the number and classification of the employees they were to hire. This information was delayed because of the Bureau of the Budget's refusal to authorize hire until the Board had adopted a program.⁵⁶ Finding capable staff members, especially to fill the lower level jobs, was a problem of the NWLB, as it was with all agencies at this time.⁵⁷ By December 1, 1942, the field offices collectively were employing 102 persons, and 54 were engaged but had not yet reported for duty.⁵⁸ One regional office had no staff at all.⁵⁹

⁵² *Ibid.*, p. 1.

⁵³ *Ibid.*, p. 17.

⁵⁴ *Ibid.*, pp. 9, 11, 23, 28 f.

⁵⁵ *Verb. Trans.*, November 18, 1942, p. 303.

⁵⁶ Carl Schedler, Deputy Executive Director, "Memo to the Public Members of the Board," dated November 7, 1942.

⁵⁷ NWLB, "Meeting with Regional Directors," *Verbatim Transcript*, January 10, 1943, pp. 1 ff.

⁵⁸ Carl Schedler, Deputy Executive Director, "Memo to the Public Members of the Board," dated December 3, 1942.

⁵⁹ *Verb. Trans.*, December 3, 1942, p. 426.

Within the difficult limits of their operating authority, the directors acted effectively in establishing the regional offices. The Board expressed approval of the work of all the directors, except one. The exception was a man who made suggestions in something less than diplomatic terms: "You can quote me as being exceedingly distressed with the whole organization set-up provided, and this last decision as to the rating of the attorney is almost the final blow."⁶⁰ This director was asked to resign because it was charged that he lacked diplomacy and that he was criticizing the delay at the National Board level.⁶¹

FORMULATION OF POLICY FOR REGIONAL DELEGATION

All the problems of the regional directors were not concerned with internal management. Concurrent with its activities in the location and organization of regional offices, the Board was also busy formulating policy and developing techniques for delegating authority to regions. The Vice-Chairman, more than any other member of the Board, recognized that policy had to be determined before effective decentralization would be possible.⁶² And in the first three months of the stabilization program, he pounded away in every session at the need for delegation of authority. The Board's voluntary case load was already mounting. Between October 3 and October 20, 1,200 new cases had been accumulated by the Wage and Hour Division,⁶³ but by December 3 only 262 of these had reached the NWLB's regional offices.⁶⁴ The decision to use the Wage and Hour Division offices to deal directly with the public and to accept applications for wage increases allowed applicants to file their cases quickly. However, decisions were delayed because the Wage and Hour Division employees were not yet well trained and because the Board had not yet adopted a policy, much less delegated regional authority. This process was slow.

It was not until November 5, 1942, when the Board finally adopted a general statement that explained the principles⁶⁵ by which it would decide voluntary cases and that also indicated the detailed functions of the directors in the field. The originally proposed statement allowed the directors to rule initially on no applications at all. In the general discussion of this preliminary draft, the labor members of the Board strenuously objected to it because they thought the directors should

⁶⁰ *Verb. Trans.*, November 27, 1942, pp. 599 f.

⁶¹ *Ibid.*, p. 740. At a later date the Board recognized that it had erred in seeking the director's resignation, since it shortly adopted all suggestions at which it had recently taken offense. Further the Board recognized that the man in question had "done more for labor relations" as an arbitrator in a specialized industry in his region than any man had ever done before.

⁶² *Verb. Trans.*, October 6, 1942, p. 45.

⁶³ *Verb. Trans.*, October 20, 1942, p. 136.

⁶⁴ *Verb. Trans.*, December 3, 1942, p. 431.

⁶⁵ The principles "explained" were those previously developed in dispute cases and by now referred to in executive orders and statutes.

have authority to rule on *all* maladjustment cases, which involved the Little Steel Formula. The public members of the Board objected to this general grant of power on the grounds that the directors would not know how to apply the principle. The Board had had the experience of misapplication of the formula by its disputes panels.⁶⁶ The public members did not object to allocating this authority sometime in the future, but they thought that in the initial stages all regional activity should be pre-audited at the national level.⁶⁷ The labor members rebutted that the argument from the analogy of panel performance was not valid because "the Board had no definite wage policy for the panels to follow . . ."⁶⁸ and that the Board had already reserved to itself the right to investigate any case. As a result of having heard various opinions, Vice-Chairman Taylor was authorized to prepare a revised policy statement for regional guidance.

In writing the statement granting the regional directors authority, Taylor discovered "that the only basis you could have a delegation on was this Little Steel business, this 15%. It seemed that could be delegated. . . ."⁶⁹ Authority under the maladjustment criterion was easily delegable because it was easily limitable by types of industries. The originally revised plan limited the regional directors' authority to those manufacturing industries which were the most essential to the war effort and about which the Bureau of Labor Statistics had accumulated some statistical information.⁷⁰ The labor position remained unchanged. It wanted to delegate all maladjustment cases to the regional directors. Two additional objections to the revised plan were submitted. First, if authority were to be delegated at all, should not it be for action on the least important, rather than the most important, industries to the war effort? Second, if a maladjustment in wage rates did exist, then of what significance was the nature of the industry in determining what constituted 15 percent above the base year?⁷¹ Chairman Davis first suggested allowing the directors to apply the Little Steel Formula in certain "designated" industries. George Meany, an AFL member, took up this position, moved it, and pushed it through the Board.⁷² The list of designated industries was to be determined later.

THE STATEMENT OF PRINCIPLES

As finally adopted, the statement contained four principles on which applications for wage and salary rate increases might be granted. (1) *Maladjustments*. This meant the application of the Little Steel Formula. If the workers, as a group, in a particular plant had not yet received a wage rate increase of 15 percent over their average straight-time rates

⁶⁶ *Verb. Trans.*, October 28, 1942, p. 239.

⁶⁷ *Ibid.*, pp. 238 and 241 f.

⁶⁸ *Ibid.*, pp. 245 f.

⁶⁹ *Verb. Trans.*, November 4, 1942, p. 348.

⁷⁰ *Ibid.*, p. 350.

⁷¹ *Ibid.*, pp. 353 f.

⁷² *Verb. Trans.*, November 5, 1942, p. 391.

since January 1, 1941, they were entitled to an increase up to this amount—provided that such an increase would not result in the plant's wage rates being out of line with the wage rates paid by other plants in that area. Since the application of the formula was predominantly mathematical, it was easily delegable. Regional directors might rule, in designated industries, on cases involving this principle. (2) *Inequalities and Gross Inequities*. The Board defined such cases as "those which represent manifest injustices that arise from unusual and unreasonable differences in wage rates." Vice-Chairman Taylor at one time attempted to work out some type of delegation based on this principle, but stated, "I just don't know how to set up instructions to them on it."⁷³ The regional directors could make no rulings under this criterion. Applications based upon it were to be forwarded to Washington with the recommendation of the director. The National Board would act. (3) *Substandards of Living*. No general policy was enunciated, and the Board would not define substandards by a fixed wage rate. Regional directors had no authority to rule upon this claim. (4) *Effective Prosecution of the War*. When other agencies of the government had tried unsuccessfully to solve the manpower problems of an industry essential to the war effort, the Board might "in cooperation with the War Manpower Commission and other Government agencies" grant wage increases. Regional offices at this time had no part in the application of this criterion.

This statement of principles, when considered as a set of basic criteria on which the regions were dependent for processing cases, was meager fare. Although the regional directors now had theoretic authority to act on maladjustment cases, this authority was meaningless for two weeks, until the Board adopted a list of designated industries.

DESIGNATED INDUSTRIES

On November 19, 1942, the Board adopted its first list of designated industries. When the list was proposed for adoption, objections to limiting the power of the directors to approve Little Steel Formula applications in any type of industry were again raised, but were overcome.⁷⁴ The 29 industries designated were chosen with three related criteria in mind.⁷⁵ Industries that had not yet had cases before the Board, or on which the question of whether to apply the Little Steel Formula had not been decided, were excluded. Second, industries in which the Board had determined the applicability of the Little Steel Formula, but not the unit to which it should be applied, were excluded. Third, industries in which 10 to 12 percent of the allowable increase under the Little Steel Formula had already been granted by the National Board were included.

⁷³ *Verb. Trans.*, November 4, 1942, p. 359.

⁷⁴ *Verb. Trans.*, November 19, 1942, pp. 399 ff.

⁷⁵ *Ibid.*

LIBERALIZATION OF REGIONAL AUTHORITY OVER INEQUALITIES

On the same day that the Board adopted its first list of designated industries, it authorized the regional directors to rule finally on cases claiming inequalities and gross inequities provided that all of five conditions prevailed. (1) The director's decision must be consistent with Board policy. This requirement was not easily fulfilled. Indeed it is questionable whether the Board ever had a "policy" on inequalities. And it might be assumed that the Board's agents would not pointedly attempt to decide cases in a manner inconsistent with National Board policy. (2) If price relief were involved, the regional director could not rule finally, because OPA and consequently the Director of Economic Stabilization were involved. (3) If the application involved five percent or fewer of a plant's employees, the director might rule finally. This limitation was imposed to restrict the activities of the directors to applications which, if approved unwisely, would not be greatly unstabilizing. Those Board members who wanted to decentralize authority quickly argued for amending the "5 percent" to "10 percent." Those who preferred to be more cautious in delegating authority insisted upon five percent. (4) If the application did not propose the adjustment of any employee's wage rate by more than five cents per hour, the regional director might rule finally. This limitation, too, was an attempt to restrict the activities of the directors to applications which, if approved unwisely, would not be greatly unstabilizing. Those Board members who were willing to decentralize authority quickly argued for amending the "5 cents" to "10 cents." Those who preferred to be more cautious in delegating authority insisted upon five cents. (5) The regions were to submit a bi-weekly report to the National Division of Review, Analysis, and Research. The report was hardly a "condition" under which the directors could act. It was a method of keeping the national level informed about regional office activity and of auditing regional application of Board policy.⁷⁶

THE CRITERION OF NUMBERS

Approximately three weeks after the regions first acquired authority to rule finally on limited types of inequities cases, the restrictions were relaxed. On December 14, 1942, by Administrative Order No. 7, the regional directors were authorized to make final rulings on *all* voluntary adjustment cases in which the company involved employed fewer than 100 employees and in which price relief was not being requested.⁷⁷ This Order extended the regions' jurisdiction over maladjustment cases even to those involving fewer than 100 workers. This Order extended regional jurisdiction over inequalities cases even to those that involved adjustments affecting more than 5 percent of the plant and that involved

⁷⁶ *Verb. Trans.*, November 19, 1942, pp. 595 ff.

⁷⁷ *Verb. Trans.*, December 14, 1942, p. 79.

adjustments for more than 5 cents an hour for any employee, provided the applicant employed fewer than 100 workers. And Administrative Order No. 7, for the first time, gave the regions authority to apply the principles of substandards of living and effective prosecution of the war—to applicants that employed fewer than 100 persons.

As originally proposed, the Order applied to cases in which the employer hired fewer than 200 workers. But the more cautious of the Board members effected, by substitution, the amendment of the "200" to "100." Significantly, this additional grant of authority was not accompanied by additional guidance, or standards, or principles, or criteria. There was as yet no wage stabilization manual.

Application of Administrative Order No. 7 allowed the regional directors to rule upon 66 percent of all cases filed with the Board at this time.⁷⁸ The important point about the delegation of authority finally to rule in all voluntary cases where fewer than 100 were employed is that the policy was established *ex necessitate*. The National Board simply wanted to rid itself of a potentially impossible caseload. At the Board level, very slight consideration was given to the functions that the regions would perform. The quality of the decisions that might result from this delegation was not debated. It was suggested that the bulk of the operating work had to be delegated to the regions eventually and that not much harm could be done by regional handling of cases involving only 100 employees.⁷⁹ As one staff member, while discussing whether the delegation should apply to cases in which the employer hired 100 or 200 employees, expressed it:

I don't think it makes a particle of difference. It is a number so that you can get rid of the small cases. One hundred would be just as good from an administrative point of view as two hundred. . . . I am saying it doesn't matter really whether it is one hundred, one hundred fifty, or two hundred, as long as it is an amount where the Regional Directors can get these little cases out of the way.⁸⁰

Chairman Davis expressed a similar view:

I think in making these further releases of authority to the Regional Directors, the test that we ought to apply is this: First, does it affect a large number of cases? That is, after we analyze the cases going through our regional offices, we ought to group them into those cases which are of a character which represent a large number and a small number respectively.

Then we look at the groups which affect large numbers, and, therefore, present a large administrative problem.

The next question ought to be, would it affect the stabilization policy to release the total of them to the Directors, whatever they do with them.⁸¹

⁷⁸ *Verb. Trans.*, December 14, 1942, p. 84.

⁷⁹ *Verb. Trans.*, December 14, 1942, pp. 84 ff.

⁸⁰ George C. Kirstein, Executive Director, NWLB, *Ibid.*, p. 87.

⁸¹ *Verb. Trans.*, December 14, 1942, p. 93.

SUBSTANDARDS OF LIVING

On the same day that Administrative Order No. 7 was adopted, Carroll R. Daugherty, the Chief of the Division of Review and Analysis, submitted to the Board a group of twelve Tobacco Warehouse Cases which sought approval for wage rates under 40 cents an hour. For employees covered by the Fair Labor Standards Act, Board approval to raise rates to this minimum was not necessary. For employees *not* covered by the Act, Board approval to raise rates to this minimum was necessary. At this time the regional directors had no authority to apply the substandards principle to plants employing more than 100 workers. They might only make recommendations to the National Board. As a result of considering the Tobacco Warehouse Cases, Vice Chairman Taylor wanted to grant the regional directors authority to rule finally on all applications that sought approval for minimum rates of 40 cents an hour or less. The Daugherty-Taylor plan was defeated, however, on the basis of the objection of the labor group. Its position was that such a delegation would result in the public attributing to the Board the view that 40 cents an hour was a *satisfactory* minimum wage. Because of labor's objection, the Daugherty-Taylor proposal was withdrawn in favor of the Board's deciding the twelve cases at hand.⁸² The National Board decisions were to continue to be guides for the regional directors in handling substandards cases. The result was that the Board adopted a minimum wage of at least 40 cents per hour without specifically recommending or ordering the regions to adopt the same policy. The regions were left to flounder without specific directions or guidance.

REGIONAL REQUESTS AND SPECIAL CASES

On December 28, 1942, by Administrative Order No. 8, the Board formalized a procedure that had been recurrently considered for three weeks. In the first week of December Lewis Gill, then Director of Region V, requested Board permission to rule on three specific cases that were not covered by the Board's General Orders. A National Board Policy Committee recommended that Gill be allowed to rule on two of the three cases.⁸³ But on the same day the Board itself rejected the recommendation of the Policy Committee. Its reason was that granting power to rule on specific cases would result in an inequity to those persons involved in other cases that might have been submitted at an earlier date. Requests to rule on specific cases were, however, recurrent. As a result, by Administrative Order No. 8, the Board authorized the directors to request permission to rule on any *type* of case. This same Order established a Request Review Committee com-

⁸² *Verb. Trans.*, December 14, 1942, pp. 90 ff.

⁸³ NWLB, *Verb. Trans.*, Policy Committee Meeting, December 7, 1942, no pagination.

posed of one public member, the Executive Secretary, and the Director of the Division of Review and Analysis.

In addition to the authority finally to rule on limited types of cases involving the four basic principles of wage stabilization contained in the Board's statement of November 5, 1942, regional directors during the life of the regional advisory boards were given jurisdiction over certain other types of adjustments.⁸⁴

DISPUTES AND THE R.A.B.s

Although the functions of the regional advisory boards were predominantly confined to voluntary wage adjustment cases, they were not completely divorced from the disputes functions. The idea of giving the regions a part in disputes settlement was aired in early discussions of the establishment of field offices.⁸⁵ But, as plans for decentralization developed, inclusion of the regions as active participants in the disputes program was not adopted. The regions had not yet earned the National Board's confidence. And the National Board did not want to overwhelm the regions with work.⁸⁶ Chairman Davis, at a meeting of the Committee on Policy and Procedure, first suggested a clear distinction in the method of handling dispute and voluntary cases. Dispute cases were to be certified directly to the National Board by the Secretary of Labor. Voluntary cases were to be transferred directly to the regional offices by the Wage and Hour Division. Chairman Davis later explained to the Board that he thought the regional advisory boards could be used in finding suitable members for the National Board's dispute panels.⁸⁷ This general idea was adopted. The regional advisory boards were to recommend industry and public panel members, who were initially to hear dispute cases and report their findings and recommendations directly to the National Board. The panel members were to be formally approved by the Board in Washington.⁸⁸ The labor panel members were chosen upon recommendation of the labor members of the National Board after consultation with their respective organizations.

The function of the regional advisory boards in dispute cases was hazy. This situation resulted in many problems that the regional directors and their advisory boards were to face. The general confusion led public member Wayne Morse to remark, "We are creating the im-

⁸⁴ See, for example, *Verb. Trans.*, November 24, 1942, p. 34 and pp. 266 ff. Since these types of adjustments remained relatively unchanged during the entire period of the NWLB, they are discussed in Chapter IX.

⁸⁵ *Verb. Trans.*, October 7, 1942, p. 272.

⁸⁶ *Verb. Trans.*, October 20, 1942, pp. 132 ff.

⁸⁷ *Verb. Trans.*, October 24, 1942, p. 730.

⁸⁸ *Verb. Trans.*, December 1, 1942, pp. 40 f. By this date, the regional advisory boards had apparently taken no action in recommending dispute panel members, and the Board voted to call this neglect to their attention.

pression that we don't know what we are doing, and of course we don't, so far as procedure on disputes is concerned."⁸⁹

EARLY REGIONAL WAGE STABILIZATION PROBLEMS

The regions were not without difficulties in the area of wage stabilization. Many recurrent problems had their origins in these early days. The regions soon learned the difficulties of processing inequalities cases. They wanted "a more definite statement from you gentlemen as to how these policies shall be applied. . . ."⁹⁰ Another difficulty in processing inequalities cases was lack of information. The Bureau of Labor Statistics regional offices had not yet been satisfactorily organized.⁹¹ Neither was there enough information available on the Form 10, the "Application for Approval of a Voluntary or Agreed-Upon Wage or Salary Adjustment."⁹² The regions soon discovered perplexing jurisdictional problems between them and the commissions exercising NWLB power over particular industries.⁹³ The regions were also burdened by the trouble of applying one stabilization policy while the Salary Stabilization Unit of the Treasury Department, which had jurisdiction over all salaries not under NWLB authority, applied a different one.⁹⁴

Many of the early regional problems were common to those most field offices encounter in their first days. It is notable that the regional advisory boards were "independent" in their actions from their inception. They were critical of National Board policy. They resented their minor part in the stabilization program. And they readily passed resolutions saying so.⁹⁵ The members and staff of the National Board thought they understood regional problems and operating difficulties, but the regions thought they did not. The regions thought they understood problems being encountered in Washington, but the National level thought the regions did not.⁹⁶ Actually, neither acted as if it understood the problems of the other. The National Board was eager to establish uniformity of procedure, while the regions were chafing under minute administrative instructions. One Board member wanted to regulate the regions' performance "even down as to how they shall

⁸⁹ *Verb. Trans.*, December 14, 1942, p. 52.

⁹⁰ *Verb. Trans.*, January 9, 1943, p. 784.

⁹¹ George Kirstein, Executive Director, NWLB, "Memo to Public Members of the Board," dated December 29, 1942.

⁹² Carl Schedler, Deputy Executive Director, NWLB, "Memo for the Public Members of the Board," dated November 25, 1942. Also *ibid.*, dated December 8, 1942.

⁹³ Carl Schedler, Deputy Executive Director, NWLB, "Memo to the Public Members of the Board," dated January 5, 1942.

⁹⁴ Carl Schedler, Deputy Executive Director, NWLB, "Memo to the Public Members of the Board," dated December 8, 1942.

⁹⁵ See Region I, "Meeting of Advisory Council to the Regional Director of the War Labor Board," *Verbatim Transcripts*, dated November 27, 1942; December 11, 1942; December 23, 1942; January 6, 1943; and January 21, 1943.

⁹⁶ For example see *Verb. Trans.*, December 1, 1942, p. 134.

acknowledge letters all the way down the line, anything that goes out of the office."⁹⁷ Administrative orders coming out of Washington were not lucid. One Board member attempted to correct the situation by complaining,

What is troubling me is this, that if we get out these administrative orders that we can't understand, how in the name of time do you expect the Regional Directors to understand them? They will have to have interpretive orders for these orders, and whether it is possible to couch them in language so that even he who runs may read or not, I don't know. But if we have difficulty understanding what they mean, what is the Regional Director going to be up against when he is called upon to take cognizance?⁹⁸

The absence of specific interpretation of Board policy and administrative orders was partially due to lack of staff;⁹⁹ both the National Board and the regions had difficulty in hiring competent people.

Keeping the regions informed was itself a problem. In typical fashion, the Board created a job to solve this difficulty. The Director of Operations would have an assistant. His duties would be solely to see that sufficient copies of all NWLB materials, orders, and decisions reached the Board's regional directors and the Wage and Hour Division's field offices without delay.¹⁰⁰ In late December the Board first considered issuing a manual in explanation of stabilization principles.¹⁰¹

GROWTH OF REGIONAL WAR LABOR BOARDS

Although the regional directors and their regional advisory boards faced many difficulties, these problems were not responsible for the basic change in NWLB regional organization. The substitution of the regional war labor board (RWLB) for the regional advisory board and the decision to use regional offices in settling dispute cases can be attributed solely to a growing backlog of dispute cases at the national level.¹⁰² From January through July 1942, the NWLB received from 34 to 76 dispute cases each month; in August it received 150 cases;

⁹⁷ Martin P. Durkin, AFL Member, NWLB, *Verb. Trans.*, November 17, 1942, p. 34.

⁹⁸ Fred Hewitt, AFL Member, NWLB, *Verb. Trans.*, November 24, 1942, p. 275.

⁹⁹ *Verb. Trans.*, December 3, 1942, p. 432.

¹⁰⁰ Carl Schedler, Deputy Executive Director, NWLB, "Memo for the Public Members," dated December 9, 1942.

¹⁰¹ *Verb. Trans.*, December 22, 1942, p. 297.

¹⁰² *Term. Report*, p. 789, quotes Wayne Morse, Public Member, as giving an additional reason: "We were going to try to bring the local communities into play, make them a part of the War Labor Board program." In the opinion of the author, the discussions of policy during executive sessions do not reflect the use of local communities as a "reason" for decentralization of disputes. Rather, bringing "the local communities into play" was a convenient and useful method of administering a decentralized program decided upon because of an almost prohibitive caseload.

in September, 178 cases; in October, 243 cases; and in November, 365.¹⁰³ By the end of December, this steady increase of new dispute cases had resulted in a backlog of 1,100 cases.¹⁰⁴ This backlog resulted in part from the Board's delay in processing the cases.¹⁰⁵

Although the use of regional offices to handle dispute cases had been mentioned in early discussions of decentralization, it was not seriously considered until the middle of December. At that time Wayne Morse, Public Member, opened the discussion by saying,

I am ready to recommend that there be set-up in the field, in connection with our Regional offices, standing dispute panels in connection with these Regional offices. . . . A little War Labor Board, tripartite in nature, with power to finally determine . . . [the dispute].¹⁰⁶

As originally conceived, the plan envisaged standing panels in major cities over the United States. The regional directors and the regional advisory boards were to "sit there to watch any proposed decisions that are going to be out of line with our policy. . . ."¹⁰⁷ The plan included appeal to the National Board. In an effort to reduce its own caseload, the Board intended to approve almost automatically the reports of tripartite panels, if the panel members were unanimous in their conclusions.¹⁰⁸ It also planned to discontinue its policy of granting automatic review in all dispute cases.¹⁰⁹ There was some objection to the proposal on the grounds that until the Board had established a well-developed policy there should be no delegation. This objection was overcome by the suggestion that the panels be informed of Board policy by a formalized set of instructions.¹¹⁰

Shortage of operating funds forced the final decision to decentralize dispute case administration. The Bureau of the Budget was holding up Board money for the third quarter of the fiscal year because of duplication of services with the Conciliation Service.¹¹¹ George Taylor, Vice-Chairman, summarized, "If we don't get this over to the Budget tomorrow, we won't have any funds to do any decentralizing."¹¹²

¹⁰³ *Ibid.*, p. 788.

¹⁰⁴ H. L. Enarson to David H. Stowe, Bureau of the Budget, Memorandum, Subject: "Dr. Steelman's Views on the War Labor Board, as developed in the hearing of the Conciliation Service Budget, December 29, 1942," dated December 30, 1942.

¹⁰⁵ Carroll K. Shaw reports that the War Production Board decentralized authority to process priority applications for substantially the same reasons. *Field Organization and Administration of the War Production Board and Precursor Agencies, May 1940 to November 1945*, Historical Reports on War Administration, War Production Board, Special Study No. 25 (1947), p. 69.

¹⁰⁶ *Verb. Trans.*, December 14, 1942, p. 54.

¹⁰⁷ Wayne Morse, Public Member, NWLB, *Verb. Trans.*, December 18, 1942, p. 650.

¹⁰⁸ *Verb. Trans.*, December 14, 1942, p. 61.

¹⁰⁹ *Verb. Trans.*, December 18, 1942, p. 650.

¹¹⁰ *Ibid.*, pp. 647 ff.

¹¹¹ *Verb. Trans.*, January 5, 1943, p. 163.

¹¹² *Ibid.*, pp. 16 f.

THE GARRISON PLAN

The original detailed plan for decentralization of disputes was submitted by Lloyd Garrison, then Executive Director and later public member. This plan would have used the Conciliation Service mediators who were attached to the Board's regional offices to give the facts, without recommendations, to the regional boards. On the basis of these facts, the regional boards themselves were to make decisions, but only after consulting the regional directors on any wage issues that were involved. The regional boards, it was anticipated, might occasionally use separate hearing panels after cases had been assigned to them. No order of a regional board was to become effective until ten days after it had been submitted to the regional director, who was to advise the National Board if any order were not in accord with NWLB policy.¹¹³ Under this Garrison plan, the regional director was to be the National Board's watchdog and thus superior to the regional boards. On the other hand, in the voluntary case program, the regional board was to be the National Board's watchdog, and in that sense superior to the regional director. This conflict was pointed out by Robert J. Watt, AFL labor member:

I think your wage policy director either has to be in charge or he has to be under your chairman of your Regional War Labor Board, one or the other. I don't think you can follow this and have that dual authority because right off in my opinion in some regions, anyway, you would have one group being played off against the other. They would both be a law unto themselves in that set-up. Therefore, I think that something has got to be worked out placing the Regional Director at the head or making him subsidiary to the Regional War Labor Board itself.¹¹⁴

The Board solved this dilemma by making the regional war labor boards responsible for both wage stabilization and disputes.

THE NEW PATTERN IN THE FIELD

As finally adopted, the Board's new decentralization scheme had twelve tripartite regional war labor boards in lieu of the regional advisory boards.¹¹⁵ The regional directors became chairmen of the regional war labor boards. Formally, the Board unanimously resolved:

That when the members of a Regional War Labor Board are appointed:

(a) The Regional War Labor Board is thereupon vested with all of the powers of the National War Labor Board subject to the provisions for review laid down in the decentralization plan of January 6, 1943 and to the requirement that all action taken shall be in conformity with the policies and rules laid down by the National War Labor Board; and

¹¹³ *Ibid.*, pp. 50 ff.

¹¹⁴ *Ibid.*, p. 139.

¹¹⁵ When the Regional War Labor Boards were created, two additional regions were carved out of the original ten. See Chapter V.

(b) The Wage Stabilization Director of the Regional War Labor Board, upon his appointment, is vested with the powers and is subject to the duties previously assigned by the National War Labor Board to the Regional Director whose position will cease to exist upon the appointment of the Wage Stabilization Director.¹¹⁶

With the public announcement of the Board's decentralization plan on January 21, 1943, and with the formation of the first of the regional war labor boards on February 7, 1943, the basic organizational structure of the NWLB was completed—to remain substantially unchanged throughout its existence. The bulk of the regional boards' experiences lay ahead of them. But the regional war labor boards never erased the experiences of their past.

¹¹⁶ Lloyd Garrison, Executive Director, NWLB, to Chairmen, RWLBs, Memorandum, Subject: "Powers of Regional War Labor Boards," dated February 19, 1943. Also *Verb. Trans.*, February 18, 1943, p. 438.

CHAPTER V

AREAS AND OFFICES

The problem of correlating the work of the National and Regional Boards increases in direct proportion to the square of the distance from Washington, in our opinion. It is easy for Board and staff members of the Eastern Regions to get to Washington, and easy for National War Labor Board representatives to drop in on the Regional offices. But the more distant Regions do not have the advantage of such frequent contacts, and the National Board in turn does not always have available a full picture of the problems of the more distant Regions—problems which vary with the temperament and industrial background of the people.

—Floyd McGown, *RWLB VIII*, Regional Chairman, to T. W. Kheel, Executive Director, Letter, dated January 24, 1944.

Political boundaries are not indigenous, but artificial. State lines, the product of historical growth, "are fixed in constitutional law and custom, but in an industrialized, high-energy society they have been less and less important as areas for the administration of national programs."¹ Federal regional boundaries cannot always trace the lines of local units of government, which serve general purposes. For Federal areas have "single or at best a few related purposes and programs to fulfill."² Federal regional boundaries do, however, "show a general respect for state boundaries."³

Every agency attempting territorial decentralization soon faces the problem of drawing regional boundaries. The job is at the same time more than artistic and more than perfunctory. Each agency must suit its areal lines to the socio-economic function that it is performing. It must consider equalization of the work load, boundaries of cooperating agencies, and disadvantages of creating a new regional pattern.⁴ The criteria are flexible, for "there is no valid geographic version of Calvinistic predestination."⁵ Areas for Federal administration differ greatly.

In establishing regional boundaries, the location of the regional office becomes significant. A headquarters city ought to be centrally located within the region. Transportation to and from the surrounding area ought to be frequent and fast. The dispersal of the agency's

¹ Earl Latham, *The Federal Field Service* (Chicago: Public Administration Service, 1947), p. 19.

² *Ibid.*

³ James W. Fesler, "Federal Administrative Regions," *American Political Science Review*, XXX (April, 1936), p. 264.

⁴ James W. Fesler, "Criteria for Administrative Regions," *Social Forces*, XXII (October, 1943), p. 27.

⁵ James W. Fesler, "Federal Use of Administrative Areas," *The Annals*, CCVII (January, 1940), p. 111.

clientele ought to be considered. These factors do not weigh the same with all agencies. However, "there is a significant agreement on the choice of headquarters [cities]. . . ."⁶

THE ORIGINAL AREAS

In October of 1943 when the National War Labor Board had decided upon decentralization as a means to effect wage stabilization, it faced the problem of choosing headquarters cities and areal boundaries for its regions.⁷ The NWLB delegated the administrative responsibility to a tripartite committee of six members headed by George Taylor, Vice-Chairman. The committee recommended and the Board quickly adopted the headquarters cities and regional boundaries that were used by the Central Administrative Services Division of the Office for Emergency Management.⁸ The Bureau of the Budget actively encouraged use of CAS areas,⁹ and the Board recognized the advantages of CAS help in setting up its own regional offices.¹⁰ The Wage and Hour and Public Contracts Division of the Department of Labor had regional offices located in each of the CAS headquarters cities, except Denver where it had its biggest district office. This was a factor in the Board's decision.¹¹ And the CAS regions followed the accepted pattern of not crossing state lines. Thus there was a presumption in favor of the CAS regional areas, and at this time sufficient facts were not available to justify an adequate challenge to their use. However, in making

⁶ James W. Fesler, "Federal Administrative Regions," *American Political Science Review*, XXX (April, 1936), pp. 265 ff.

⁷ See Chapter IV.

⁸ The numerical designation given each region, the headquarters cities, and the states within each region are given below, as the regions were originally constituted.

Region	Headquarters City	States in Region
I	Boston	Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and Rhode Island.
II	New York	New York and New Jersey.
III	Philadelphia	Pennsylvania, Virginia, Delaware, Maryland, and the District of Columbia.
IV	Atlanta	Georgia, North Carolina, South Carolina, Florida, Tennessee, Alabama, and Mississippi.
V	Cleveland	Michigan, Ohio, West Virginia, and Kentucky.
VI	Chicago	Indiana, Illinois, Wisconsin, Minnesota, Iowa, North Dakota, and South Dakota.
VII	Kansas City	Missouri, Arkansas, Nebraska, and Kansas.
VIII	Dallas	Texas, Louisiana, and Oklahoma.
IX	Denver	Colorado, New Mexico, Montana, Wyoming, Utah, and Idaho.
X	San Francisco	California, Washington, Oregon, Nevada, and Arizona.

Source: *Term. Report*, p. 784.

⁹ *Verb. Trans.*, October 7, 1942, p. 260.

¹⁰ *Verb. Trans.*, October 20, 1942, p. 65.

¹¹ *Ibid.*, p. 67.

budgetary preparations the Board was considering the creation of additional regional offices, as well as the possibility of setting up district offices.

CREATION OF DETROIT AND SEATTLE OFFICES

When the National Board decided to decentralize its disputes work as well as its wage stabilization work and to change the regional advisory boards to the regional war labor boards, it created two additional regions with headquarters cities in Detroit and Seattle.¹² Thus the NWLB joined many other agencies in having a total of twelve regions.¹³ In settling upon twelve offices, the Board was able to consider a greater variety of factors than it had in deciding upon the initial ten, because the intervening months had given it general experience and indications of caseloads. In addition to consideration of general criteria summarized by Millett as cost, area served, and people served,¹⁴ the Board considered the number of disputes handled by the Conciliation Service in 1942, the number of cases certified to the National Board by the United States Department of Labor, the number of unprocessed voluntary cases in the regional offices of the Board, and the location of the National Labor Relations Board offices.¹⁵

In establishing an office in Seattle, the Board actually yielded—like the War Production Board¹⁶—to public and political pressure. However, it used as reasons the travel difficulties of persons living in the northwest and the caseload of the Tenth Region headquartered in San Francisco.¹⁷ The Seattle office was given jurisdiction over the states of Washington and Oregon, which were withdrawn from the Tenth Region, and over the territory of Alaska.

Pressure for the establishment of a regional office in Detroit was begun as early as mid-November of 1942.¹⁸ When the NWLB set up the office, it rationalized its action on grounds that the state of Michigan, which was the entire area under the jurisdiction of the Eleventh Region, constituted a special industrial area and that the caseload of the Fifth Region which had included Michigan, was then the greatest of all the regions.¹⁹

NEW JERSEY COUNTIES AND IOWA

During the period of transition between the creation of the ten original regions and the establishment of the twelve regions, several

¹² *Verb. Trans.*, January 6, 1943, p. 426.

¹³ National Resources Committee, *Regional Factors in National Planning* (Washington: Government Printing Office, 1935), p. 72.

¹⁴ John D. Millett, "Field Organization and Staff Supervision," *New Horizons in Public Administration* (University, Alabama: University of Alabama Press, 1945), p. 101.

¹⁵ *Term. Report*, pp. 790 f.

¹⁶ Carroll K. Shaw, *op. cit.*, pp. 156 ff.

¹⁷ *Verb. Trans.*, Meeting with Regional Chairmen, January 10, 1943, pp. 75 f.

¹⁸ *Verb. Trans.*, November 13, 1942, p. 645.

¹⁹ *Verb. Trans.*, Meeting with Regional Chairmen, January 10, 1942, p. 75.

other changes were made. Twelve counties in southern New Jersey were transferred from the jurisdiction of the New York office to the Philadelphia office. This change was effected because of the distance from the counties to the two headquarters cities, because of the travel difficulties and schedules involved, and because of the high case load of the Second Region.²⁰ The state of Iowa was removed from the jurisdiction of the Chicago office, which had the highest caseload, to the jurisdiction of the Kansas City office.²¹ Neither of these two changes was protested by either the public or the regional boards concerned.

POOR VIRGINIA

Virginia was a problem.²² After the regional advisory boards had begun operations and after the Seattle and Detroit offices were established, Virginia began protesting its location in the Philadelphia Region. When a Board member asked the Executive Director for the reasons for the deluge of pressure, Garrison replied, "It is based on the theory of keeping the South under the South. . . . It has nothing to do with convenience or travel or anything like that."²³ Virginia was an economic problem to the Philadelphia office, because its wage rates were exceedingly low in comparison with the other states in the region, and because the internal organization of the region's wage stabilization division was based on an industrial pattern unfamiliar to Virginia's economy.²⁴ When the Philadelphia Board met, Virginia cases disrupted procedure. George Taylor, Vice-Chairman, NWLB, summarized the situation:

You have . . . [John Doe] there from Virginia who feels it necessary, every time a Virginia case comes up, to go to town and defend the Virginia point of view, and that sort of thing. And it just has the Board split all ways in a battle over this thing.²⁵

Virginia was the unwanted state. The Atlanta Region did not want Virginia because its caseload was already excessive, and because it did not feel that it could handle the added burden.²⁶ The National Board was divided in opinion as to where Virginia should be. Chairman Davis at one time seriously suggested that Virginia be allowed to have a separate region of its own.²⁷ The CIO members of the Board objected to shifting Virginia to the Southern Region. They argued that Virginia would then be grouped with low wage states, which would tend to drag her wage structure down by comparison.²⁸ Frank P. Graham,

²⁰ *Loc. cit.*

²¹ *Loc. cit.*

²² Virginia was also a problem to the WPB. Carroll K. Shaw, *op. cit.*, p. 155.

²³ *Verb. Trans.*, February 25, 1943, p. 280.

²⁴ *Verb. Trans.*, Meeting of RWLBs East of the Mississippi, March 20, 1943, p. 62.

²⁵ *Verb. Trans.*, March 23, 1943, p. 327.

²⁶ *Ibid.*, p. 334.

²⁸ *Ibid.*, p. 326.

²⁷ *Ibid.*, p. 329.

public member, reasoned that Virginia would tend to depress wage rates in the Philadelphia Region and tend to raise wage rates in the southern area; therefore the change should be effected.²⁹

The motion to transfer Virginia to the Atlanta Board was carried 10 to 2. The problem was, however, never solved. The transfer took its toll of morale among the staff members of the Fourth Region. And throughout the existence of the Board, labor organizations moaned that from places like Alexandria they had to travel six hundred miles to Atlanta. Congressmen then began exerting efforts to restore Virginia to Region III in Philadelphia. When this pressure became known, George Taylor ventured,

Maybe we ought to suggest, to throw out the suggestion, that maybe we are moving to Philadelphia, and let the other side get their Congressmen busy.³⁰

No further action was taken, and Virginia remained under the jurisdiction of the Atlanta Board.

IOWA-ILLINOIS COUNTIES

Four counties in Iowa and six counties in Illinois were the source of much difficulty.³¹ Geographically, the Illinois counties in question were those bordering Missouri, around St. Louis. The Iowa counties were those bordering Illinois, around Dubuque. As the regional boundaries were originally set, they did not cross state lines. On August 20, 1943, the Deputy Executive Director in charge of Field Operations announced to the National Board that the Chicago and Kansas City Boards had jointly requested the transfer of the Illinois counties to the jurisdiction of the Kansas City office and the transfer of the Iowa counties to the Chicago office.³² A motion effecting this transfer was adopted unanimously without debate.

Shortly after the change was made, the Board was subjected to great pressure to restore the original areas. Even White House officials made inquiries.³³ Labor unions in the areas vigorously protested the change. They argued that even the War Manpower Commission had not included the Illinois counties in the St. Louis metropolitan area and that the change would put the counties into an area with lower wage brackets.³⁴ The regional boards too were subjected

²⁹ *Ibid.*, p. 340.

³⁰ *Verb. Trans.*, Div. A, August 15, 1944, pp. A-154 f.

³¹ The Iowa counties were Clinton, Dubuque, Jackson, and Scott. The Illinois counties were Calhoun, Greene, Jersey, Madison, Monroe, and St. Clair.

³² *Verb. Trans.*, August 20, 1943, p. 293.

³³ See William H. Davis, Chairman, NWLB, to James M. Barnes, Administrative Assistant to the President, Memorandum, No Subject, dated September 14, 1943.

³⁴ As examples, see Lucy K. Barlett, Secretary, Woodrider, Illinois Central Labor Union, to RWLB VII, Letter, dated September 21, 1943; and J. I. Rollings, RWLB VII, AFL Member, to George T. Brown, Executive Assistant to AFL Labor Members, NWLB, Letter, dated October 19, 1943.

to pressure.³⁵ The Kansas City Board thought that the original transfer had been initiated in Washington; whereas Washington thought that both regional boards had wanted the change.³⁶ Only after the Deputy Executive Director had visited both regions was the matter resolved. Motivation for the initial transfer has been summarized by the chairman of the Kansas City Board in the following terms:

The only agency that has been particularly interested in having them transferred to us is the Navy. They feel that disputes work can be handled quicker out of Kansas City. Carl [Schedler, Deputy Executive Director,] was in the office today and states that my letter [indicating that the Kansas City Board had thought the change had been initiated in Washington] has put him on the spot since he thought we wanted the counties. However, we have all now decided to blame it on the Navy.³⁷

When the labor members of both RWLB VI and RWLB VII combined in a resolution requesting the return of the counties to their original regions,³⁸ the National Board restored them.³⁹

ARKANSAS

Although no other changes were made in regional boundaries, there was agitation for other alterations.⁴⁰ Primarily because of the zeal of Arkansas' members of Congress, in 1943 the Board considered moving the state from the jurisdiction of the Kansas City office to the jurisdiction of the Atlanta office. The Arkansas Congressional contingent was incensed because the industry members of the Kansas City Board paid little attention to their suggestions for appointments to part-time board and panel positions.⁴¹ At any rate, Arkansas' Congressmen

³⁵ R. K. Burns, RWLB VI, Regional Chairman, to J. Hoskins, RWLB VII, Regional Chairman, Letter, dated October 8, 1943.

³⁶ J. A. Hoskins, RWLB VII, Regional Chairman, to Carl Schedler, Deputy Director in charge of field operations, NWLB, Letter, dated October 2, 1943.

³⁷ J. A. Hoskins, RWLB VII, Regional Chairman, to R. K. Burns, RWLB VI, Regional Chairman, Letter, dated October 12, 1943.

³⁸ J. A. Hoskins, RWLB VII, Regional Chairman, to Carl Schedler, Deputy Director in charge of field operations, Memorandum, Subject: "Transfer of Illinois Counties," dated October 27, 1943.

³⁹ L. K. Garrison, Executive Director, to E. Warren, RWLB VII, Regional Chairman, Telegram, dated December 31, 1943. The problem of the Iowa-Illinois counties is summarized in *Verb. Trans.*, Div. A, May 30, 1944, p. A-39.

⁴⁰ A Territorial War Labor Board for Hawaii was also created. This change did not affect the domestic United States. See 29 *CFR*, 1944 *Supp.*, 803.36. A consideration of the problems of the TWLB is beyond the scope of consideration here. However for pertinent discussions on the development of action leading to it, see *Verb. Trans.*, April 14, 1943, pp. 487 ff; *Verb. Trans.*, Div. A, May 19, 1944, pp. 504 ff; and *Verb. Trans.*, Div. A, May 25, 1944, p. A-534.

⁴¹ Fr. J. C. Friedl, S. J., RWLB VII, Public Member, to J. A. Hoskins, RWLB VII, Regional Chairman, Memorandum, Subject: "Philip Hicky proposed as industry member by Congressman Gatlings of Arkansas," dated July 3, 1943.

actively pressured the Board.⁴² The reason for the suggested change was summarized by Congressman Gathings:

Arkansas, particularly in the Eastern Section, is constantly confronted with the racial problem, which is one that people from the other four states [under the Kansas City office] . . . cannot as easily understand or appreciate.⁴³

The Congressman recommended the transfer of his state to the jurisdiction of the Atlanta office. Because remaining under the Kansas City office meant being in a region with higher wage rates, unions were opposed to the transfer.⁴⁴ The Kansas City Board was at first quite willing to release Arkansas,⁴⁵ but later felt that Arkansas should not be removed from its jurisdiction unless it could be demonstrated that the board was not "doing a good job."⁴⁶

In order to placate ruffled Arkansas feelings, the full twelve-man regional board held a meeting in Little Rock. At the same time it brought a number of staff members, invited the participation of other interested governmental agencies, and sponsored an educational clinic.⁴⁷ As a result of this session, the regional board concluded "that their [industry's and labor's] objections to the retention of Arkansas in the Seventh Region had largely been overcome."⁴⁸ The National Board did not transfer Arkansas to the Atlanta region.

About six months after the tentative plan to move Arkansas to the jurisdiction of the Atlanta Board had been abandoned, another effort was made to get Arkansas transferred—this time to the jurisdiction of the Dallas Board. John R. Steelman, then Director of the United States Conciliation Service, approved of the change because he believed that the interests of Arkansas were more closely allied with the states

⁴² E. C. Gathings, M. C., to L. K. Garrison, Executive Director, NWLB, Letter, dated September 25, 1943; William H. Davis, Chairman, NWLB, to Senator H. Carraway, Letter, dated October 25, 1943; and Carl Schedler, Deputy Director in charge of field operations, to Senator John L. McClellan, Letter, dated October 26, 1943.

⁴³ *Loc. cit.*

⁴⁴ L. P. Williams, Secretary-Treasurer, Arkansas State Federation of Labor, to J. I. Rollings, RWLB VII, AFL Member, Letter, dated October 21, 1943; and J. A. Hoskins, RWLB VII, Regional Chairman, to William H. Davis, Chairman, NWLB, Letter, dated November 17, 1943.

⁴⁵ J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, Letter, dated May 28, 1943.

⁴⁶ J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report on Congressman Gathings' Suggestions Concerning Arkansas," dated October 19, 1943.

⁴⁷ J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report for Week Ending November 6, 1942," Not dated.

⁴⁸ P. F. Nachtman, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Bi-Weekly Report of Regional Board," dated May 13, 1944.

of Oklahoma, Texas, and Louisiana.⁴⁹ The change would have enabled closer cooperation between the NWLB and the Conciliation Service.⁵⁰ Arkansas' representatives in Congress—Carraway, Gathings, Morell, and Mills—again urged the change.⁵¹ And business interests recommended it because the Salary Stabilization Unit of the Treasury Department was located in Dallas, because the industries of the other states under the jurisdiction of the Dallas office were similar to those in Arkansas, and because Dallas was conveniently reached by train.⁵² The Kansas City office was still opposed to losing Arkansas.⁵³ The National Board again voted against the transfer.⁵⁴

THE DAKOTAS

While the Board was actively considering the transfer of Arkansas from the Kansas City office, it was concurrently considering the transfer of North and South Dakota from the Chicago office to the Kansas City office. The move was initiated within the NWLB because the caseload of the Sixth Region was almost prohibitively high.⁵⁵ Neither the Kansas City nor the Chicago Office objected to the change.⁵⁶ Labor in the Dakotas, however, greatly objected to this transfer of jurisdiction,⁵⁷ and the Board was subjected to great public protest against it. The National Board, in opposition to the judgment of its Executive Director, took no action.⁵⁸

The Board also considered creating a new region covering the states of North Dakota, South Dakota, Wisconsin and Minnesota with the regional office located in either Minneapolis or St. Paul.⁵⁹ The new

⁴⁹ J. R. Steelman, Director, United States Conciliation Service, to T. W. Kheel, Executive Director, Memorandum, Subject: "Transfer of State of Arkansas from Conciliation Service Region V to Region II," dated April 27, 1944.

⁵⁰ *Verb. Trans.*, Div. A, May 30, 1944, p. A-46.

⁵¹ T. W. Kheel, Executive Director, to Paul F. Nachtman, RWLB VII, Regional Chairman, teletype, Subject: "Transfer of Arkansas to Region VIII and South and North Dakota to Region VII," dated May 22, 1944.

⁵² Chamber of Commerce, Pine Bluff, Arkansas, *Resolution*, dated June 2, 1944.

⁵³ Paul Nachtman, RWLB VII, Regional Chairman, to Ted Kheel, Executive Director, telegram, dated May 10, 1944; and P. F. Nachtman, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Bi-weekly Report on Regional Board," dated May 13, 1944.

⁵⁴ T. W. Kheel, Executive Director, to Edgar Warren, RWLB VI, Regional Chairman; Paul Nachtman, RWLB VII, Regional Chairman; and Miles Madden, RWLB VIII, Regional Chairman, telegram, dated June 27, 1944.

⁵⁵ T. W. Kheel, Executive Director, to Paul Nachtman, RWLB VII, Regional Chairman, teletype, Subject: "Transfer of Arkansas, North Dakota, and South Dakota," dated May 13, 1944.

⁵⁶ RWLB VI, *Minutes*, May 5, 1944.

⁵⁷ Francis McDonald, Secretary-Treasurer, S. Dakota State Federation of Labor, to John Rollings, RWLB VII, Labor Member, Letter, dated June 3, 1944.

⁵⁸ T. W. Kheel, Executive Director, to Edgar Warren, RWLB VI, Regional Chairman; Paul Nachtman, RWLB VII, Regional Chairman; and Miles Madden, RWLB VIII, Regional Chairman, telegram, dated June 27, 1944.

⁵⁹ *Verb. Trans.*, June 7, 1943, pp. 116 f.

office was suggested as an alternate solution to placing North and South Dakota under the Kansas City office, for it would relieve the congestion of cases in the Chicago office.⁶⁰ Public pressure seemed to favor the establishment of such an office.⁶¹ The Executive Director disapproved of the change for budgetary reasons. He argued that it cost \$450,000 per year to maintain the Denver office and \$750,000 to maintain the Chicago office, which handled approximately seven times as many cases as Denver.⁶² Primarily because of budget limitations, the National Board voted against the creation of this additional region.⁶³

RELATED AGENCIES' OFFICES

The National War Labor Board selected for offices those cities used by the governmental agencies with which it worked. Nine of the headquarters cities used by the Board were also headquarters cities for the regions of the Wage and Hour and Public Contracts Division, the Central Administrative Services, the War Manpower Commission, the National Labor Relations Board, the War Production Board, and the Office of Price Administration.⁶⁴ The NWLB headquarters cities were those customarily used by the peacetime government agencies.⁶⁵ However, only 16 of the 48 states were under the jurisdiction of a regional office headquarters city common to all these agencies.⁶⁶ An additional 15 states were under the jurisdiction of a regional office headquarters city common to the NWLB and all but one of the other agencies. The Bureau of Labor Statistics opened regional offices in the same cities and with jurisdiction over the same areas as the NWLB.⁶⁷ Different headquarters cities and conflicting boundaries of different agencies with which the Board dealt made inter-agency cooperation in the field difficult.⁶⁸

⁶⁰ *Verb. Trans.*, Div. A, May 30, 1944, p. A-33.

⁶¹ *Ibid.*, p. A-32.

⁶² *Verb. Trans.*, Div. A, May 30, 1944, p. A-34.

⁶³ Edgar Warren, RWLB VI, Regional Chairman, to Members and Staff of Sixth Regional Board, Memorandum, Subject: "The National Board's Decision Not to Establish a Regional Board in the Minneapolis-St. Paul Area," dated June 6, 1944.

⁶⁴ These cities were Boston, New York, Philadelphia, Atlanta, Cleveland, Chicago, Kansas City, Dallas, and San Francisco. NWLB, "Regional Organizations," not dated; *Seventh Annual Report of the National Labor Relations Board, for the Fiscal Year ended June 30, 1942*. (Washington: Government Printing Office, 1942), p. 162; OEM, Division of CAS, "List of Field Offices," As of October 1, 1942; and Carroll K. Shaw, *op. cit.*, p. 160.

⁶⁵ See James W. Fesler, "Federal Administrative Regions," *American Political Science Review*, XXX (April, 1936), pp. 265 ff.

⁶⁶ *Loc. cit.*

⁶⁷ United States Department of Labor, "Activities of the Bureau of Labor Statistics in World War II" (Washington: Government Printing Office, 1947), p. 160.

⁶⁸ J. Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Suggested procedure for clearing interpretations by the Regional Wage and Hours Divisions and Regional War Labor Board

OFF-SETTING DEMANDS FOR LOCAL OFFICES

To allay public cries for the creation of different headquarters cities and separate boards, the regions occasionally stationed permanent officers in cities other than their headquarters. There was an organized effort to force the National Board to establish a regional office in Los Angeles, California.⁶⁹ Both industry and labor groups favored such an office.⁷⁰ In Los Angeles, the Tenth Region at various times had an assistant director of the disputes division, an administrative officer, and a staff to serve the board's panels.⁷¹ To meet a similar situation, the Seattle office had an attorney stationed in Portland, Oregon; he had authority to exercise the same powers and duties as the regional attorney, subject to the latter's supervision.⁷² And in Buffalo the New York office had a representative to keep panel members informed on changes in board policy, to expedite the establishment of panels in that immediate area, to supervise panel hearings, and to act as liaison with the Wage and Hour Division office.⁷³ The Alaskan arrangement, as finally constituted, also used dual officers with jurisdiction over different areas.⁷⁴

Two additional methods should be included among those that tended to offset demands for more local offices. First, wage and dispute panels in the field brought the boards' agents to geographically dispersed places in the regions.⁷⁵ Second, the regional boards' custom of sitting in different cities throughout their regions brought them into communication with the local areas. This method of bringing the Board to the people was originally suggested by the Board's Vice-Chairman and proved to be successful.⁷⁶

DISTRIBUTION OF WORKLOAD

Insofar as the National Board attempted to arrange regional boundaries in an effort to equalize the work load, it was not greatly successful. The percentage of the total number of voluntary cases decided by

officers," dated October 2, 1943; and T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Jurisdiction: War Labor Board and Salary Stabilization Unit," dated July 31, 1944.

⁶⁹ The WPB also gave special status to Los Angeles. Carroll K. Shaw, *op. cit.*, p. 155.

⁷⁰ The labor position is summarized in Philip M. Connelly, Secretary to Los Angeles CIO Council, to Daniel V. Flanagan, RWLB X, AFL Member, Letter with enclosures, dated July 21, 1943.

⁷¹ See T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report for Week Ending August 14," Not dated; RWLB X, "Daily Board Actions," August 25, 1943; and *Verb. Trans.*, December 3, 1942, p. 593.

⁷² RWLB XII, *Minutes*, September 13, 1944.

⁷³ T. L. Norton, RWLB II, Regional Chairman, to Fred E. Desmond, Deputy Executive Director, Letter, dated September 30, 1943.

⁷⁴ See *Verb. Trans.*, Dec. 17, 1942, p. 614, and RWLB XII, *Minutes*, Jan. 4, 1944.

⁷⁵ *Verb. Trans.*, Conference of Regional Chairmen, April 17, 1943, pp. 102 ff, gives examples of some types of panels in the field.

⁷⁶ *Verb. Trans.*, January 5, 1943, p. 10.

all regional boards varied from 2.2 in Region IX and 2.4 in Region XII, to 16.7 in Region II and 15.4 in Region VI.⁷⁷ The percentage of the total number of dispute cases decided by all regional boards varied from 2.2 in Region IX and 2.8 in Region XII, to 16.6 in Region VI and 13.0 in Region II.⁷⁸

The experience of the National War Labor Board with headquarters cities and regional boundaries points up no problems not usually encountered in connection with field offices.

⁷⁷ Table 22, "Applications for voluntary wage or salary adjustments decided in regional offices of National War Labor Board, by authority making decision," July 1, 1944-August 17, 1945, in *Term. Report*, p. 505.

⁷⁸ Computed from Table 4, "Sample of dispute cases decided by the National War Labor Board and its agents: by board authority deciding case," January 12, 1942-August 18, 1945, in *Term. Report*, p. 483.

CHAPTER VI

REGIONAL BOARD ORGANIZATION AND PERSONNEL

The Public Members of our Board are the type of individuals who will not accept strict rules and regulations. . . . They are all liberal minded men, but I am of the opinion that we would have a great deal of difficulty in maintaining the right kind of public members on our Board if you set down rigid rules and told them they couldn't use their own flexible ideas in particular cases. I am sincere in saying that, because I have seen their reaction to these problems.

—Robert E. Curtis, RWLB VIII, CIO Member, Verb. Trans., February 18, 1944, p. 1051.

...When you have 12 public part-time members, one comes in and sits this week and he comes back 6 weeks later, and there is no continuity of policies. I am not going to call any names, but you can walk in the Board meeting of Tuesday and see who the public members are sitting there and you have a pretty good idea of what is going to be done.

—George L. Googe, RWLB IV, AFL Member, Verb. Trans., Tripartite Division of the Atlanta Regional War Labor Board, January 13, 1944, pp. 77 f.

Lines and boxes on an organization chart do not make a governmental agency work. People do. The most skillfully devised techniques for operation cannot alone produce effective administration. The eminent Leonard D. White has written,

Many elements combine to make good administration: leadership, organization, finance, morale, methods and procedures, but greater than any of these is manpower.¹

To a great extent, organization is dependent upon men, especially during the growth of an agency. The functions that an agency division may finally be assigned are often pre-determined by the men available to head the divisions. Zeal of particular men for special phases of activity often leads to more adequate funds for those parts of the program. And an unsympathetic staff can reduce program efficiency to zero. But a vital, capable, and "happy" staff can accomplish much even with poor organization, techniques, and procedures.

Correlatively, administrative men are dependent upon organization. Government, like society, cannot thrive in chaos. Men without order thrash about at given tasks uselessly. Organization is a tool of men; it is not the goal. Organization evokes the ability of men. It allows the advantages of specialization and of division of labor. An agency well-staffed and well-organized is equipped to meet efficiently its administrative chores.

¹ Leonard D. White, *Introduction to the Study of Public Administration* (3rd ed.; New York: The Macmillan Company, 1948), p. 313.

FROM RABs To RWLBs

The regional advisory boards greeted the idea of regional war labor boards with enthusiasm. For they had been "a bit disturbed that they did not have more important functions and duties to perform and they had the impression that they were window-dressing rather than an actual Board."² The regional war labor boards were established more easily than the regional advisory boards before them. Within three weeks after the NWLB's announcement, the first Regional War Labor Board was formally constituted. A month and a half later all the regional boards were functioning.³

SELECTION OF BOARD MEMBERS

Institution of the new organizational and operational arrangements was made easier by an earlier decision to make the Board's former regional directors the chairmen of the newly created regional boards.⁴ The chairmen assisted the National Board in selecting the public members of the RWLBs and, to a lesser extent, the industry members. The original members of the RABs were recommended for appointment to the RWLBs. Some members refused appointment because of the additional amount of time the new work would take. The greatest number of resignations during the transition period came from the industry group.⁵ Labor members were chosen through the AFL and the CIO structure, with formal recommendations coming through the labor members of the National Board. The chairmen made suggestions for industry members on the regional boards, but responsibility for formal recommendation rested with the industry members of the National Board. National business organizations, such as the Chamber of Commerce and the National Association of Manufacturers, assisted the industry members by suggested business men who might be willing to serve. Vice-chairmen of the RWLBs, who were full-time public members, were also chosen by the National Board, usually upon the recommendation of the regions' chairmen.

² *Verb. Trans.*, January 9, 1943, p. 753.

³ The dates on which the creation of the Regional Boards was announced follow in calendar order.

Region II	New York	February 7, 1943
Region XI	Detroit	February 11, 1943
Region X	San Francisco	February 11, 1943
Region V	Cleveland	February 12, 1943
Region VIII	Dallas	February 12, 1943
Region I	Boston	February 14, 1943
Region III	Philadelphia	February 14, 1943
Region VI	Chicago	February 14, 1943
Region VII	Kansas City	February 15, 1943
Region IV	Atlanta	February 21, 1943
Region IX	Denver	March 1, 1943
Region XII	Seattle	March 21, 1943

⁴ *Verb. Trans.*, January 10, 1943, p. 4.

⁵ *Verb. Trans.*, January 9, 1943, p. 753.

FILLING REGIONAL BOARD VACANCIES

Once the regional boards were constituted, they became—in effect—self-perpetuating, although *formal* appointment and selection were made at the National Board level. Regional industry and labor members were responsible for filling vacancies in their respective groups.⁶ Regional labor groups selected new members for nomination through the regular CIO-AFL organizations; regional industry groups selected new members for nomination through more informal channels. Labor representatives were more inclined than industry representatives to nominate members because of the nominees' positions in their respective organizations, rather than because of their ability successfully to perform the duties of a board member.⁷ Each group, which was "responsible" for its choice, nominated its respective group members. The nomination of a special group to fill a special group vacancy on a board was tantamount to the regional board's unanimous endorsement of the prospective appointee to the National Board. If labor presented a name for nomination, industry and public members never interposed objections. The same situation prevailed when industry nominated.

Nomination of regional board members to represent the public was not so easily accomplished. Recommendations by public members to fill board positions representing the public were not automatically given unanimous board approval. The public members represented the balance. Accordingly all three groups were vitally interested in their selection. Both industry and labor would require time to investigate a prospective public member's background in labor relations. Public members, "responsible" for the nomination of other public members, considered the objections that might be raised by labor and industry, and after consideration either withdrew or insisted upon the nomination. When there were two vacancies in the public member contingency, it was not unusual for the board groups to compromise. If the nominee for one vacancy were regarded by industry as relatively pro-labor and if the nominee for the other were regarded by labor as relatively pro-industry, then both might be accepted. Industry and labor objections to the nomination of some public members were not always based upon facts, but sometimes based on biases.

When a regional board recommended nominees to the National Board, each group at the National Board level presented its respective candidates for formal appointment.⁸ In Washington, too, the nominations of special group candidates encountered no opposition from the

⁶ NWLB, Resolution, July 22, 1944.

⁷ This difference appears to arise not from the magnanimity of industry, but rather from the fact that the formal organization of industry in the United States is not as substantial, nationally or regionally, as that of labor.

⁸ Lloyd Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Appointment of additional members or replacement members for the RWLBs," dated August 23, 1943.

other groups. In approving all *per diem* regional board members (labor, industry, and public), the action of the National Board was perfunctory.⁹ In contradistinction, the choice of full-time members, usually only the chairmen and vice-chairmen,¹⁰ received careful consideration by the National Board. Chairmen and vice-chairmen, like other Board members, were nominated by their respective regions. The National Board, however, could not rely upon a unanimous recommendation reached by a regional board in open meeting, when the region was backing a staff or *per diem* public member to be chairman or vice-chairman. Too often labor and industry members were reluctant to express their true sentiments in open session, for fear that their adverse vote would prejudice the prospective member in his consideration of future cases. In such instances, the special group member would write to his respective group in Washington, where the true feeling would be bared.¹¹ Occasionally, the Board would send a staff member from Washington to interview personally the various board members.¹² Regional board members not uncommonly urged their own promotion to board chairmanship at the expense of others.¹³ As a rule, however, the National Board was fairly well acquainted with the persons it chose to be chairmen and vice-chairmen.¹⁴ When the National Board doubted whom it should appoint chairman, it might appoint an acting chairman. In one instance it sent its Executive Director to act as regional chairman while it deliberated a permanent appointment.¹⁵

FACTORS INVOLVED IN SELECTING REGIONAL BOARD MEMBERS:

(1) POLITICS

In the initial process of selecting regional board members, several factors were involved. First, like the Office of Price Administration, the Board cleared its appointees at the Capitol.¹⁶ After the public members

⁹ For example, see *Verb. Trans.*, Div. A, May 16, 1944, pp. A-218 ff.

¹⁰ In one instance a *per diem* public member was authorized to assume the title of Vice-Chairman. This situation arose upon the request of the regional board when a former regional attorney was appointed to be a full-time public member and Vice-Chairman. The *per diem* public member had occupied his position at the time when the newly appointed Vice-Chairman had been the regional attorney. Thus, as a matter of prestige, the *per diem* public member became a Vice-Chairman. See *Verb. Trans.*, Div. A, April 4, 1945, p. 59. Similar situations had existed previously on other regional boards, but the *per diem* public members were not elevated in title.

¹¹ *Verb. Trans.*, March 6, 1943, pp. 760 and 769.

¹² Fred Desmond, Deputy Executive Director, to T. W. Kheel, Executive Director, Memorandum (Pencilled draft), Subject: "Trip to Dallas Office, June 13, 14, 15, 1944." Not dated.

¹³ See *Verb. Trans.*, November 24, 1943, p. 525.

¹⁴ See *Verb. Trans.*, Div. A, May 16, 1944, p. A-221.

¹⁵ *Verb. Trans.*, February 7, 1944, p. 17.

¹⁶ For comparable OPA experience, see Emmette S. Redford, *Field Administration of Wartime Rationing*, Office of Temporary Controls, Office of Price Administration, General Publication No. 4 (Washington: Government Printing Office, 1947), p. 19.

of the National Board had decided upon the public members for a regional board, those selected were "cleared" with the Senators representing the states that comprised the regions. The Senators were also approached for suggestions. Usually there were no staunch objections interposed on the initial selections. And Executive Director Garrison reported to the Board that this system created good will "on the Hill."¹⁷

In filling subsequent vacancies on the regional boards, the NWLB did not clear prospective members with Congress. Occasionally Congressional pressure was exerted to force the hire of some political favorite,¹⁸ but the Board would not yield. Indeed, appointments were sometimes made in spite of clear Senatorial opposition.¹⁹ Even the White House was occasionally interested in appointments. An administrative assistant to the President wrote to Chairman Davis, in regard to making an appointment in one of the regions, "He would be a very competent individual for your organization. I would appreciate your investigating this matter and advising me."²⁰ Although the Board was proud of its refusal to make political appointments, it treated political pressure with proper deference.

(2) GEOGRAPHY

A second factor considered by the National Board in selecting members for the regional boards was geographical representation. The NWLB held geographical representation, as well as functional representation, to be the ideal, because it thought that the program must be close to the people. Although the Board made great public claim to the "grass roots" approach, it was never successful. There was a strong tendency for representation on the boards to be determined by three factors other than geographical distribution. First, the areas most heavily populated were likely to be over-represented. This situation may be accounted for because transportation facilities to and from heavily populated areas were usually good and because outstanding men were more likely to be found in large urban centers. Second, areas

¹⁷ *Verb. Trans.*, February 5, 1943, pp. 724 ff.

¹⁸ For example, see T. W. Kheel, Executive Director, to Arthur Klein, Member Congress, Letter, dated February 9, 1943, and T. W. Kheel, Executive Director, to Senator Tom Connally, Letter, dated June 17, 1944.

¹⁹ William A. Waldron, Administrative Assistant, to Chairman Davis, Memorandum, No Subject, dated February 7, 1944, illustrates the pressure clearly.

Apropos of the . . . [John Doe] situation, Tom Eliot advised me this afternoon that Senator Mead feels strongly on the subject and has asked Chairman Hannegan of the National Democratic Committee to call you.

Tom thinks that the Senator's opposition arises from . . . [Doe's] refusal to make certain appointments in Buffalo when he was connected with the OPA.

Tom believes that Senator Wagner has no objection to the appointment. "Doe" was appointed.

²⁰ James M. Barnes, Administrative Assistant to the President, to William H. Davis, Chairman, NWLB, Memorandum, Subject: ". . . Applicant," dated June 16, 1943.

most heavily industrialized were likely to be over-represented. This situation may be accounted for because labor unions tend to grow in the more heavily industrialized areas and because "big" industry had greater representation on the boards than "little" industry. Third, areas close to the regional headquarters cities were likely to be over-represented. This situation may be accounted for because operating necessity demanded it. A last minute change of plans by a board member residing in a distant place could be remedied by calling on a member who lived in the headquarters city.

An attempt was made, however, to have some balance of geographic representation. But the achievement of a balance of board membership did not result in the achievement of a balance of participation in regional board activities. In Region II, for example, western and central New York were generally under-represented.²¹ The Tenth Region had different industry members for deciding cases involving Southern California and for cases involving Northern California.²² To the extent that a balanced geographical representation was achieved, it did give the people within the region a feeling of having some part of the governmental process. This was especially true when the board sat and decided cases in various places within the region. Geographical representation brought disadvantages similar to those summarized by Professor Cushman:

It tends in the first place to increase unnecessarily the size of the commission. Second, it almost invariably results in intersectional logrolling or intersectional deadlock. It distracts attention from the merit of the appointee and focuses it upon the place from which he comes. . . . Finally, such representation injects into the work of the commission itself the idea of representation, instead of leaving the commission free from pressure to serve the best interests of the public irrespective of local interests.²³

Experience of the regional war labor boards provides additional substantiation for Professor Cushman's generalization.

(3) INDUSTRIAL BACKGROUND

A third factor that the National Board considered in making appointments to the regional boards was the industrial experience of employer and employee board members. A balance of experience among the various types of industries was desired. In regions where the variety of industry was limited, the regional boards were more likely to have such a balance. In other regions, relatively important industries

²¹ Robert G. Dixon, Jr., "The Tripartite and Compliance Aspects of the NWLB with Special Reference to Region II, New York City" (Ph.D. Dissertation, Department of Political Science, Syracuse University, 1947), pp. 111 ff. See also *Term. Report*, p. 620.

²² *Verb. Trans.*, Div. A, May 23, 1945, p. 3.

²³ R. E. Cushman, *Independent Regulatory Commissions* (New York: Oxford, 1941), pp. 753 ff.

were neglected. In Region II, for example, the needle trades and textile industries were under-represented.²⁴ Lack of balance was usually attributable to the method by which the special interest members were chosen. Labor members were more likely to be recommended because of the positions their unions occupied in the general confederation, than because of industrial balance. Industry members were likely to recommend their friends in allied industries, because of the lack of a more formal organization.

By considering political factors, geographical factors, and industrial factors, in addition to functional representation, the NWLB was attempting to make the regional boards into little replicas of their regional communities. Failure to succeed was due as much to the nature of the task imposed as to the methods used to accomplish the purpose. Once the regional boards had been constituted, the National Board spent little time discussing their composition.

(4) REGIONAL PRESSURE

In addition to its self-imposed factors for consideration, the Board found that it had to contend with still another factor—regional pressure. When the initial appointments were being considered, industry and labor groups plied the National Board with letters suggesting various candidates for the positions.²⁵ In the days of the regional boards' maturity, even greater public pressure was exerted. The Executive Director summarized this procedure:

Because once the vacancy becomes known a lot of politics inevitably sets in among the local people, and that has already tended to take place in Dallas. We have been getting telegrams from one group or another advocating So-and-so or So-and-so.

. . . These Regional Boards have become such an integral part of the communities that the communities feel they should have something to say as who takes the place of Floyd.²⁶

Although the Board apparently made no decisions on the basis of public pressures alone, the letters and telegrams made themselves felt because the Board recognized the necessity of its employees having the community's respect.

SELECTION OF NATIONAL BOARD PERSONNEL

The National Board's method of selecting regional board personnel resulted in making the entire organizational structure of the National War Labor Board a product of inbreeding and self-perpetuation—in fact, if not in formality. Until the middle of September 1945, the

²⁴ R. G. Dixon, *op. cit.*, p. 99.

²⁵ See Industrial Trade Unions of America, Boston, to Chairman, NWLB, Letter, dated January 2, 1943; and New England Power Company, Boston, to Chairman, NWLB, Letter, dated December 29, 1942.

²⁶ *Verb. Trans.*, Div. A, May 16, 1944, p. A-221.

President made appointments to the National Board only in accordance with the Board's own recommendations. No instance of the President's refusing an appointment or suggesting a name to fill a vacancy is known. After September 1945, the President, upon the Board's request, authorized it to fill vacancies in the public membership of the Board, in addition to industry and labor vacancies, by its unanimous vote.²⁷ At this late date, the NWLB became self-perpetuating in form as well as in fact.

Like the regional boards, the National Board selected its own members through the group system—each group being responsible for the selection of its own members. The public members, however, were reluctant to suggest appointments frowned upon by either of the special groups. This system of appointment allowed the Board to avoid the difficulties of the tripartite Railway Labor Board, to which appointments had been made even though the appointees did not have the support of even their own organizations.²⁸ The system also tended to promote greatly needed harmony at the Board table, since the Board would recommend no one not in general accord with its own special interpretations of the executive orders and directives under which it operated. Although self-perpetuating boards are usually regarded as being fraught with danger because they can grow unresponsive to democratic control, several factors tended to mitigate these circumstances in the NWLB. The formality of self-perpetuation was achieved only three and a half months before the Board was abolished. The Board was subject to the direction of the Director of Economic Stabilization. The President could presumably remove any member of the Board at will. There was no statutory provision for removal for cause only, and senatorial confirmation of appointments was not required. Self-perpetuation did tend to produce inbreeding and to put a premium upon thinking in the same manner as other members of the Board; it did not lead to new ideas, new methods, new approaches.

SELECTING REGIONAL BOARD STAFFS

The regional boards fitted well into the pattern of self-perpetuation and inbreeding. While the Board had first decided to maintain field offices, its young mediators were sent out to establish most of these offices. When the first regional organization was formally constituted, these young mediators were made regional directors. When regional war labor boards were created, the regional directors were elevated to the positions of regional chairmen. When additional membership on the National Board was created or when a top level Washington staff vacancy occurred, the regional chairmen were usually promoted. The

²⁷ *Verb. Trans.*, Div. B, September 10, 1945, p. 26, contains the Board's request. *Verb. Trans.*, Div. B, September 13, 1945, p. 122, contains a record of the President's approval.

²⁸ H. D. Wolf, *op. cit.*, p. 374.

industry and labor groups also had a tendency to promote from the regional level to the national level.

In turn, the mature regional boards usually selected their full-time public members from among their top staff personnel. The positions of regional director of wage stabilization and regional disputes director were the best stepping stones.²⁹ For becoming an industry or labor member of a regional board, the position of assistant to an industry or labor member was the best stepping stone.³⁰ In choosing *per diem* board members, some regions chose to elevate the best of their dispute panel members.³¹ Indeed it was not unusual in the hectic war days of rapid promotions for persons to rise from a P-3 level to a CAF-14 level as full-time public member of a regional board. Occasionally full-time positions on the regional boards were filled from the Washington staff. From the viewpoint of the entire National War Labor Board organization the regional boards were extremely inbred.³²

ADVANTAGES OF INBREEDING

There were, however, some advantages to the Board's policy of inbreeding. A newly chosen board member would already be acquainted with the intricacies of Board policy and procedure and would thus require less breaking-in time to become an effective operating member. Persons chosen would have already demonstrated their ability to comprehend and to perform the Board's program. The appointing board would know that a staff member considered for board membership would be "open-minded" and would have no prejudice against either industry or labor. A staff member thus chosen would enjoy the confidence of the board. A new member already known to the board would contribute to greater harmony and ease at the board table, and operating difficulties would be minimized.

DISADVANTAGES OF INBREEDING

On the other hand, inbreeding tended to produce sterility of thought, to discourage new ideas, and to hamper policy formulation.

²⁹ In one peculiar instance, a public member succeeded in getting himself kicked upstairs, downstairs. The public member was on a *per diem* basis, and when the full-time position of Assistant Director of Disputes became vacant, he applied for and got the position. See RWLB VIII, *Minutes*, October 11, 1944.

³⁰ For example, see RWLB IV, *Minutes*, November 14, 1944.

³¹ As illustrative, see H. Buckman, Assistant to the Industry Members, to Members of the Industry Section, RWLB V, Memorandum (mimeographed), dated March 13, 1944.

³² Humorously enough, in one region inbreeding became almost physiological:

Every employee in this office is having his blood typed and a record is being kept of this information for use when needed. Recently a call was made for a special type and employees having this special type were sent to the hospital. As a result, Mr. Van Hecke, Chairman of the Board, gave blood for Mr. Kyte, Administrative Officer, thereby keeping the "red blood" in the Agency.

T. W. Kheel, Executive Director, to the Chairmen, Regional War Labor Boards, Memorandum, Subject: "Summary of Personnel Happenings in RWLBs during Month of December," dated January 26, 1945.

It tended to produce sycophancy in staff and board members who were ambitious for promotion. Inbreeding may have deprived the Board of the use of more capable personnel not a part of it. Self-perpetuation and inbreeding within the National War Labor Board were ineffective and extreme.

TYPES OF NATIONAL BOARD MEMBERSHIP

On both the National Board and the regional boards there were various types of membership. The Executive Order creating the NWLB provided for a tripartite board composed of 12 regular "commissioners" equally divided among representatives of the public, the employer, and the employee.³³ Both industry and labor were to be represented, in the absence of the regular members, by four alternate members. Voting power of regular and alternate members was to be equal. Shortly after the Board's creation, the President authorized the appointment of associate Board members who were to act as mediators in labor disputes.³⁴

THE ALTERNATE PUBLIC MEMBERS

Later, as a result of a vastly increased caseload in both dispute and voluntary cases, the Board requested the appointment of four alternate *public* members.³⁵ Alternate public members were authorized to sit as voting members of the Board, in the absence of the regular public members, and to "perform such functions as the National War Labor Board may prescribe." The creation of alternate public members, all full-time employees, had three results. It allowed the Chairman and the Vice-Chairman to spend additional time on necessary administrative, extra-agency, and public relations problems. It provided enough public members so that the Board could consistently divide into divisions with quorums of six to decide cases. And it allowed the Board members to "plan ahead and come out and not make just a fleeting visit, but actually spend some real time with the Regional Boards."³⁶ In practice, the alternate public members performed exactly the same duties as the regular public members, and they exercised the same degree of responsibility. However, the difference between their salary level and that of the regular public members³⁷ and the inclusion of the word "alternate" in their official title contributed to diminished prestige that interfered with their effectiveness at the Board table. In April of 1945, this difficulty was overcome, in part, when the positions of alternate public member and associate public member were abolished. Provision was then made for a total of eight regular public members.³⁸

³³ 3 *CFR*, *Cum. Supp.*, 9017, dated January 12, 1942.

³⁴ 3 *CFR*, *Cum. Supp.*, 9038, dated January 24, 1942.

³⁵ 3 *CFR*, 1943 *Supp.*, 9395-A, dated November 20, 1943.

³⁶ *Verb. Trans.*, Meeting with the Regional Chairmen, December 8, 1943, p. 2.

³⁷ The difference arose because of the mention of salary in one executive order and not in another, and because of a ruling of the Budget Bureau.

³⁸ 3 *CFR*, 1945 *Supp.*, 9535, dated April 4, 1945.

ALTERNATE AND SUBSTITUTE LABOR AND INDUSTRY MEMBERS

Within the industry and labor groups, the distinction between regular and alternate membership was less significant than the difference within the public group. In addition to the regular and alternate industry and labor members, substitute industry and labor members were also used. Although the authority for the use of substitute members was not embodied in statute or executive order, the NWLB notified the President of their use, and no objection was voiced. Use of substitute members was necessary in order to provide a quorum for the operation of the Board or its divisions. In addition, the device of substitute membership allowed the industry and labor members of the National Board to call in the industry and labor regional board members for a week at a time. This system acquainted them with the problems and work of the National Board.

REGIONAL BOARD MEMBERSHIP

On the regional boards too there were various types of membership. The NWLB usually did not allow alternate and regular members of the regional boards to be at the same time alternate and regular members of the National Board. Members of the regional boards were, however, for short periods of time utilized as substitute members of the National Board. One could be, however, an associate member of the National Board and a regular member of a regional board and maintain his status with both.³⁹

PUBLIC MEMBERS

Public members of regional boards were never given the "regular," "alternate," "associate," or "substitute" title. Public members were officially distinguished by their part-time or full-time status. The first "Rules of Procedure" under which the regional boards operated provided for a total of from four to eight public representatives. Of these no fewer than two and no more than four were to be full-time salaried members.⁴⁰ The rest were to be part-time *per diem* members. For most of the time the regional boards were in existence, the "Jurisdiction and Procedure of Regional War Labor Boards" did not set a formal limit to the number of public representatives, but specified only "Representatives of the public, 4 of whom are to be available for service with the Regional War Labor Board at any given time."⁴¹ In practice, the National Board decided the total number of public members a regional board might have only in response to a regional board's specific request. Regions with the heaviest case loads or with jurisdiction over the greatest geographical areas were likely to have both the greatest number of members representing the public and the greatest

³⁹ *Verb. Trans.*, April 29, 1943, p. 654.

⁴⁰ NWLB, "Rules of Procedure," Mimeographed, January 26, 1943, I-2.

⁴¹ 29 *CFR*, 1943 *Supp.*, 802.51.

number of full-time public members. From among the full-time public members, the National Board designated one or more vice-chairmen.

INDUSTRY AND LABOR MEMBERS

Unlike the public members of regional boards, the industry and labor representatives were usually divided into regular, alternate, and substitute members. As originally constituted, each regional board had four regular industry members and four regular labor members; the same number and type of alternate members were provided for.⁴² The "Jurisdiction and Procedure of Regional War Labor Boards," as amended on April 15, 1943, neither specifies the total number of industry or labor members allowable, nor mentions the distinction between regular and alternate members. Rather it merely provides for the appointment of "Representatives of labor, 4 of whom are to be available for service with the Regional War Labor Board at any given time."⁴³ In practice, the distinction between regular and alternate members continued!⁴⁴

In late May 1944, regional board composition was again changed. The NWLB allowed a regional board to have, in addition to four regular members representing industry and labor:

(a) Four alternate members of labor and four alternate members of industry, who shall serve on the Board only in the absence of the regular representatives of their respective groups.

(b) Eight substitute representatives of labor and eight representatives of industry, who shall serve on the Board only in the absence of the regular or alternate representatives of their respective groups.⁴⁵

For the first time, substitute members were authorized by the National Board, although most regions had been employing the device.⁴⁶ In contradistinction, the Fourth Region's industry and labor members "have always been unwilling to subdivide themselves into regular, alternate, and substitute members, as suggested by Washington."⁴⁷

PARTICIPATION AT BOARD MEETINGS

Viewed in terms of formal structure, membership on regional boards tended to increase with the passage of time. However, membership on

⁴² NWLB, "Rules of Procedure," Mimeographed, January 26, 1943, I-2.

⁴³ 29 *CFR*, 1943 *Supp.*, 802.51.

⁴⁴ *Verb. Trans.*, Div. A, May 30, 1944, pp. A-12 and A-27. Executive Director Kheel remarked, "We haven't anything in our rules today covering substitutes. I suppose in a sense when a substitute serves it's illegal right now."

⁴⁵ T. W. Kheel, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Resolution with regard to the Number of Alternative and Substitute Labor and Industry Members of the RWLBs," dated June 3, 1944.

⁴⁶ On September 23, 1944, the number of substitute labor and industry members was increased to twelve. 29 *CFR*, 1944 *Supp.*, 802.51.

⁴⁷ Quoted from M. T. Van Hecke, RWLB IV, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report for Period August 19-31, 1944," dated August 31, 1944. See also RWLB IV, *Minutes*, February 25, 1943; and NWLB, *Newsletter*, September 6, 1944, p. 7.

the boards did not mean attendance at board meetings. Most of the regional boards, after their earliest days, tended to restrict the number of voting members at any one meeting to the constituted quorum of six, equally divided among the three groups. Prior to mid-February of 1944, the regions occasionally held full board meetings, and then they discussed changes in their own and in National Board policy. One such special session of RWLB VII in Kansas City drew an attendance of thirty-two members, in addition to six extra-regional visitors.⁴⁸ After mid-February, meetings were generally confined to a total of twelve members, for the National Board restricted the number of industry and labor *per diem* members at each meeting to four for each group. The limitation was made because of budget restrictions. *Per diem* members could, thus, be present at board meetings in numbers greater than four to represent each group, but only if the extra representatives waived their *per diem* allowance.⁴⁹ Even with the total attendance limited to twelve, the boards could have more members in attendance than any of the independent regulatory commissions.⁵⁰

TURNOVER

Analysis of the regional board membership indicates that turnover of board-level personnel in itself was not a gravely important problem.⁵¹ Insofar as it is possible to treat the regions as equals for the purposes of statistical comparison, the average regional board had a total of 23 industry members during its existence. RWLB XII had the lowest total of only 13 industry members, and RWLB II had the highest total of 28. The average regional board had a total of 22 labor members during its existence. RWLB IX had the lowest total of 17, and RWLB VII had the highest total of 30. The average regional board had a total of 15 public members during its existence. RWLB XII had the lowest total of 11 public members, and RWLB VIII had the highest total of 20.

PART-TIME MEMBERSHIP

Total membership on the regional boards had to be large because most members were on a part-time basis. Every regional board used part-time members to represent all three groups—labor, industry, public. The sole exception was RWLB VI in Chicago. This board was allowed

⁴⁸ J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report of RB VII for Week Ending November 13, 1943," dated November 13, 1943. For other examples, see J. A. Hoskins to L. K. Garrison, "Report of RB VII for Week Ending April 24, 1943," dated April 24, 1943, and Sylvester Garrett, RWLB III, Regional Chairman, to NWLB, Memorandum, Subject: "Report of RB III Activities for Week Ending November 12, 1943," dated November 13, 1943.

⁴⁹ T. W. Kheel, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Attendance of Per Diem Members at Board Meetings," dated February 15, 1944. See also *Verb. Trans.*, Div. A, May 30, 1944, p. A-13.

⁵⁰ Robert E. Cushman, *op. cit.*, p. 742. "The present commissions vary in size from three to eleven members."

⁵¹ See *Term. Report*, p. 585, Table I. See also pp. 621, 641, 652, 653, 672 f, 698, 711, 729, 743, 758, and 767.

four full-time public members, in lieu of any part-time members. Coincidentally, the Chicago Region consistently had one of the greatest caseloads. Executive Director Kheel justified this use of only full-time public members because "the Government would obtain dollar for dollar far more value from one full-time public member than all part-time members put together."⁵² Difficulties arising from part-time members representing interest groups was not novel in governmental experience; similar situations had handicapped previous labor boards and was generally a detriment to wartime administration.⁵³ Part-time membership was less a problem within the public group than it was within the special groups, because the public group always had at least two full-time members. These members, sitting consistently (or nearly so), were able to supply the core of the public position and to keep acquainted with the latest changes in Board policy.

REVOLVING MEMBERSHIP

Revolving membership resulting from the part-time status of labor and industry members was a handicap to the special groups in deciding issues under NWLB policy.⁵⁴ It was not until 1944 that industry and labor generally solved the problem of providing "full-time" members in order to overcome the disadvantage. The general pattern was for industry to have its executive assistant resign from the board's staff and be appointed a *per diem* board representative of industry. On the days when this "full-time" member did not sit on the board, he worked with the region's Industry Advisory Council and was paid by it.⁵⁵ Labor tried to solve the problem by using an arrangement similar to that adopted by industry, by trying to get more consistent attendance from a core of its part-time members, or by relying on its executive assistant to keep up with changes in policy and to brief the part-time labor member on cases he was to help decide.⁵⁶ Revolving part-time service made the process of educating new board members unnecessarily time-consuming.⁵⁷

⁵² T. W. Kheel, Executive Director, to Edgar Warren, RWLB VI, Regional Chairman, Letter, dated July 24, 1944.

⁵³ See for example H. G. Brainard, *op. cit.*, p. 188; L. J. Jaffe and W. G. Rice, *op. cit.*, p. 7; and Luther Gulick, *op. cit.*, p. 114.

⁵⁴ With reference to difficulties encountered in deciding dispute cases, see H. Fred Martin, Executive Assistant to AFL Members, RWLB VIII, "For the Archives," no date.

⁵⁵ This plan is illustrated, in part, by Sylvester Garrett, RWLB III, Regional Chairman, to Jesse Freiden, General Counsel, NWLB, Letter, Dated November 30, 1944; and CIO, WLB, R IV, "Newsletter," Mimeographed, dated September 1, 1944.

⁵⁶ The generalization that the public group was more consistently represented on the regional boards than industry and labor groups is dispelled, as an exception, by the statistics available from Region IX. Two of industry's representatives sat in approximately one-third more meetings than any public member. This situation was brought about in part because of changes in the board chairmanship. *Term. Report*, p. 730.

⁵⁷ *Ibid.*, p. 653.

TERMS OF BOARD MEMBERS

The presence of many names on a regional board's membership rolls indicated neither a willingness to serve, nor the ability to serve effectively. In order to overcome the first of these difficulties, one regional board adopted a resolution "to the effect that any Board member who misses three successive meetings, after invitation from the Chairman of his group to attend, will automatically be asked to resign."⁵⁸ When an industry member of RWLB IX in Denver completely refused to be bound by Board policy and voted, "NO!" on every issue, the regional board stopped inviting him to attend meetings, but his name remained on the rolls of the board. And since the *per diem* members did not enjoy tenure under Civil Service regulations, the pressure of the deadwood could be relieved and feelings saved in this manner.⁵⁹

The answer to the basic problem was term. The Board first considered it on May 23, 1944, and only one week later the NWLB acted finally. Board action was preceded by the action of a tripartite committee that recommended methods for getting rid of undesirable personnel.⁶⁰ There were several additional reasons for the NWLB's decision to impose a term on regional board *per diem* members. Some regional board labor members no longer "represented" labor, for they had not been reelected to those union positions from which they had been chosen as regional board members.⁶¹ It was suggested that the imposition of a term would "give added status and prestige to the job and . . . help regularize the operations in the office."⁶² It was pointed out that in some instances the regional board member had left the region on whose board he was supposed to serve.⁶³

For the foregoing reasons, the National Board resolved

- (1) That the term of office of all such *per diem* public, industry, and labor representatives shall expire on August 31, 1944;
- (2) That the National War Labor Board shall thereupon appoint public, industry, and labor representatives of such Board agencies whose term of office shall extend for one year unless terminated at an earlier date by the National Board.⁶⁴

⁵⁸ J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report of Regional Board VII for Week Ending July 3, 1943," dated July 3, 1943. See also RWLB VII, *Minutes*, June 30, 1943, and NWLB, *Newsletter*, July 10, 1943, p. 5.

⁵⁹ It may be noted that neither the full-time nor the part-time members of the National Board held office for a term. One may attribute this to the fact that the NWLB was a temporary, wartime agency that was a product of evolutionary growth. Normally, members of independent regulatory commissions have terms of either five or seven years. See Robert E. Cushman, *op. cit.*, p. 744.

⁶⁰ *Verb. Trans.*, Div. A, May 23, 1944, p. A-187.

⁶¹ *Verb. Trans.*, Div. A, May 30, 1944, p. A-9.

⁶² *Ibid.*, p. A-11.

⁶³ *Ibid.*, pp. A-11 f.

⁶⁴ T. W. Kheel, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Resolution with regard to the tenure of office . . . on RWLBs. . . ." dated June 3, 1944. In a roughly similar situation, the OPA chose to let the deadwood clutter up the rolls and simply added new recruits. Emmett S. Redford, *op. cit.*, p. 91.

To implement this resolution, most regional boards selected a tripartite committee to recommend members for reappointment.⁶⁵ When the regional boards' recommendations reached Washington, they were approved perfunctorily.⁶⁶ Each group nominated its respective regional members. The establishment of the one year term resulted in the regional boards' dropping from membership a total of 21 public members⁶⁷ and adding a total of 9 new appointees.⁶⁸ In effecting these terminations and appointments, the National Board delegated to the regions the unpleasant tasks and itself performed the pleasant ones. The National Board wrote the formal letters of appointment. The regional boards were directed to write the formal letters of termination to members that the Board had not reappointed.⁶⁹

EFFECTIVENESS OF BOARD MEMBERS: (1) PUBLIC

The effectiveness of regional war labor board members varied according to the group they represented and according to their individual backgrounds. Public members of regional boards became effective members more quickly than new industry and labor members, even when initial appointments were made from among persons with no previous service in any part of the NWLB organization. Speed of effectiveness at the board table varied directly with two requirements: the ability to learn quickly and the ability to accept, to think, and to act within the scope of a determined general policy. Since most of the public members were educators, it is not surprising that they became effective more quickly. Samples indicate that, following the educators, the bulk of the public members were lawyers (in non-academic pursuits), clergymen, federal officials, and editors.⁷⁰ Generally, clergymen proved the least competent at the board table; however, on one regional board a Catholic priest made a most distinguished record. Profession, however, was only one factor that enabled a public member to contribute greatly to the NWLB program. The individual was more important than his background. One who had his feelings easily ruffled, one who was guided by sentimental motives rather than by logic, and one who would consistently refuse to compromise his principles made a poor public member. On the other hand, a sense of humor, a willingness to compromise, the ability to listen, and a capacity to press one's point effectively were advantageous attributes.

⁶⁵ As an example, see RWLB VIII, *Minutes*, September 6, 1944.

⁶⁶ Reappointments for terms ending on August 31, 1945, were made in the same manner. By this time V-J day had been proclaimed. *Verb. Trans.*, Div. A, August 25, 1945, pp. 2 ff.

⁶⁷ One member was dropped because he was no longer available; at that time he was serving as an associate member of the National Board.

⁶⁸ Fred E. Desmond, Acting Executive Director, to All Public and Acting Public Members, Memorandum, No subject, dated August 11, 1944.

⁶⁹ T. W. Kheel, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Appointment and Termination of WAE and WOC Employees Pursuant to NWLB Resolution of May 30, 1944," dated July 15, 1944.

⁷⁰ See *Term. Report*, p. 586.

(2) LABOR

Within the labor part of a regional board, the CIO members were probably more effective in achieving labor's interpretation of what it thought regional board policy ought to be than were the AFL members. The CIO group relied more upon statistical information than did the AFL, which argued mostly from generalities and principles. The CIO members were more likely to press their points harder and more consistently. They tended to be less willing to compromise.

(3) INDUSTRY

An evaluation of the industry members is inconclusive. The original industry members on the National Board were high in stature in American industry, and—perhaps as a result—had few hours to give to the NWLB. Generally, they spent little time in preparing briefs for oral argument before the Board. It has been charged that they did not exercise “free choice” and confined their activity simply to voting against labor. They were referred to even by their later colleagues as “The Country Club” set and as being in the “Blue Ribbon Book.”

The most perplexing question about the effectiveness of industry members on both the regional and the national boards is “Was the owner of his own business or a person directing the labor relations of a large company a better industry member than a representative of a trade association?” Most regional boards had both types of industry members. The experience of the Detroit Regional Board, though the exception, may be significant.⁷¹ In this Region, every representative of industry was an executive of a manufacturers’ association or a trade association. During the life of this board there were no additions to, or terminations of, industry membership. Further, industry members were always available for service.

Those who maintain that trade association members are the least successful members argue their position on several grounds. They maintain that owners of their own businesses and those who have had the experience of actual negotiation with labor at the bargaining table are apt to reach decisions more realistic than the more remote trade association members. This type of industry member tends to be less doctrinaire, because he is not controlled by the position of a trade association. It is maintained that the vote of the trade association member is more controlled. The existence of controlled voting is clearly evident with regard to votes that were recorded. When the votes were not recorded, such as at meetings of the appeals committees, the trade association representatives tended more to exercise their independent judgment and hence to vote more “leniently.”

⁷¹ See L. Hemson, Executive Secretary to the Industry Members, RWLB XI, and M. Ewald, Executive Assistant to the Industry Members, to H. M. Douty, Director of Program Appraisal and Research Division, NWLB, Memorandum, Subject: “Data for National Archives,” dated October 16, 1945.

REGIONAL BOARD STAFF PERSONNEL

Although the members of the regional boards were important instruments in carrying out NWLB policy, board members could not alone perform all the regional work. A regional board could be no better than its staff. While at its peak in July 1945, the National War Labor Board employed a total of 4,393 persons—2,613 full-time, 1,162 while actively engaged (WAE), and 618 without compensation (WOC).⁷² Of these the majority were employed in the regions.

REGIONAL BOARD ORGANIZATION

To make effective use of its employees, each regional office was organized according to a basic pattern imposed by the National Board. Regional organization charts show an "office of the board" at the apex of the regional hierarchy. The office of the board included the board members and their administrative assistants, the board's recording secretary, and a director of information.

Four coordinate divisions were below the office of the board. First, the wage stabilization division was responsible for processing the wage issues in voluntary and in dispute cases. Second, the disputes division was responsible for processing dispute cases and, generally, for compliance with the "no-strike, no lock-out" pledge. The panels that heard the parties to a dispute present their case orally worked under the disputes division. Third, the legal division was responsible for giving general legal advice, for reviewing the jurisdictional decisions of the Wage and Hour Division, and for enforcing wage stabilization regulations. Fourth, a division of administrative management was responsible for the general problems of internal administration—organization, processes, record control, finance, and personnel. Within this structure, the staff of the regional war labor board worked.

Although the NWLB had unusual personnel problems because of the tripartite structure at the board level, it had few unusual personnel problems involving the regional staff employees. The regional war labor board had general authority over its personnel.

RECRUITMENT

In recruiting employees, the regional boards used the services of the Civil Service Commission, but during the war period these services proved inadequate. Members of the regional boards, especially the public ones, recruited from among their former academic colleagues and from among their students. Staff members who had previously been associated with educational institutions also attempted to recruit from their schools. The National office attempted to aid the regions. It acted as a clearing house for all qualified candidates. When a qualified person applied for a position in a region where no appropriate va-

⁷² *Term. Report*, p. 12, Footnote 1. These figures apparently include National Board, regional board, and commission personnel.

cancy existed, the regional board would forward the application to Washington. The National office would in turn distribute it to those regions having vacancies.⁷³ In this manner the Board utilized to the maximum those applications that it received. Under the guidance of the National Board, the regions formally requested the clerical personnel to ask their friends if they might be interested in board work.⁷⁴ By agreement with the Solicitor General of the Department of Labor, the Board did not recruit the attorneys working for the Department.⁷⁵ The exchange of lawyers skilled in labor relations would not have solved the basic problem of professional personnel.

Like all types of employers during war, the National War Labor Board could not recruit adequate personnel in sufficient numbers. Utilization of manpower by the armed services and the creation of necessary wartime agencies sapped the labor supply to the extent that no particular recruitment policies could be greatly successful over others. However, the NWLB regions took advantage of all chance opportunities. When the Central Administrative Service Division was abandoned, the boards hired many of its employees. When Congress killed the National Youth Administration and Office of War Information field offices, the personnel difficulties of some regions were slightly relieved.⁷⁶ The regions were short of personnel throughout their existence; however, their difficulties tended to be diminished with the passage of time.⁷⁷ The shortage of clerical personnel was most acute. At the end of July 1943, seventeen percent of the positions approved for the regional war labor boards were vacant.⁷⁸ Technical and professional employees were more easily recruited for work in the wage stabilization and administrative management divisions than in other divisions of the

⁷³ Lloyd K. Garrison, Executive Director, to All Regional Chairmen, Memorandum, Subject: "Nationwide Recruitment Program," dated October 8, 1943.

⁷⁴ Lloyd K. Garrison, Executive Director, to All Regional Employees of the National War Labor Board, Memorandum, Subject: "Recruitment of Clerical Personnel for Washington, D. C., Office of the National War Labor Board," Not dated.

⁷⁵ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Employment of Department of Labor Attorneys," dated September 15, 1943.

⁷⁶ NWLB, "Newsletter," July 17, 1943, p. 6.

⁷⁷ As examples of regional complaints of personnel shortages, see *Vcrb. Trans.*, Meeting of RWLBs East of the Mississippi, March 30, 1943; Lewis Gill, RWLB V, Regional Chairman, to Lloyd K. Garrison, Memorandum, Subject: "Weekly Report of Regional Board Activities," dated December 4, 1943, and December 18, 1943; NWLB, "Newsletter," dated January 8, 1944, and February 19, 1944; Dexter Keizer, NWLB, Public Member to T. W. Kheel, Executive Director, Memorandum, No Subject, dated August 11, 1944; G. B. Noble, RWLB XII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Monthly Report Re October 28-November 25, 1944," dated November 27, 1944; and G. B. Noble, RWLB XII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "March Report," dated March 30, 1945.

⁷⁸ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, All Regions, Memorandum, Subject: "Lists of Positions for Each Region by Division," dated September 9, 1943.

regional boards.⁷⁹ As a result of these shortages, some regional boards attempted to use part-time clerical employees.⁸⁰ Industry members of the boards occasionally lent clerical personnel from their industrial staffs for periods of two to four weeks.⁸¹ This method was used only in periods of crisis to eliminate backlogs.

SELECTION AND APPOINTMENT

In filling positions beneath the classifications of CAF-11 or P-4, regional boards were free to make appointments up to their authorized strength. Above these levels their authority to appoint was limited. All appointments carrying salaries of \$3,800 per year or over had to be cleared with the Personnel Director of the National Board and with the national division head under whose general direction the prospective employee was to work. In addition, when regional boards were filling the positions of wage stabilization director, disputes director, information director, administrative management director, and regional attorney,⁸² they needed the approval of the Executive Director. This limitation upon the hiring authority of the regional boards did not lead to grave difficulty; rarely did the national division head interfere with regional board choices.⁸³

The tripartite nature of the regional boards complicated the hiring procedure. Industry and labor groups wanted to participate in order to be certain that no persons prejudiced against their respective group would be hired. However, they were generally willing to forego approval of appointments below the \$3,800 level. Appointments paying this salary and above were usually approved either by a personnel committee of the board⁸⁴ or by the board itself.⁸⁵ The extent to which the

⁷⁹ *Loc. cit.*

⁸⁰ G. B. Noble, RWLB XII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "April Report," dated April 28, 1945. The procedure was authorized by T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Telegram, dated February 8, 1945.

⁸¹ RWLB X, "Daily Board Action," dated July 8, 1943; Robert Burns, RWLB VI, Regional Chairman, to Carl Schedler, Deputy Executive Director, Letter, dated July 24, 1943; and J. L. Zeerp, RWLB VII, Industry Assistant, Not addressed, Memorandum, No Subject, dated October 15, 1945.

⁸² For an exception to this general statement, see the following: RWLB VIII, "Transcript of Telephone Conversation between Mr. Kheel in Washington and Mr. Madden," dated September 15, 1944; Wiles Madden, RWLB VIII, Regional Chairman, to RWLB VIII, Memorandum, No Subject, dated September 18, 1944; and RWLB VIII, *Minutes*, September 19, 1944. The National Director of Administrative Management refused to approve the appointment of the region's selection for a budget officer and tried to encourage the hiring of someone of his own selection. Compare the authority of the field offices of the Office of Price Administration to hire in Redford, *op. cit.*, pp. 46 ff.

⁸³ See T. W. Kheel, Executive Director, to All Division Heads, Memorandum, No Subject, dated January 17, 1945. The same provisions were made in the *Manual of Operations*.

⁸⁴ RWLB I, *Minutes*, February 23, 1943; RWLB IX, *Minutes*, August 28, 1943; and RWLB XII, *Minutes*, August 25, 1943.

⁸⁵ RWLB I, *Minutes*, September 30, 1943; and RWLB II, *Minutes*, February 10, 1943.

industry and labor groups participated in making appointments varied greatly among the regional boards. The tripartite structure was an administrative advantage in personnel relations in no boards, and it was a distinct handicap in others.

In one board, the battle over methods of appointing staff members was very bitter. A full board meeting considered the problem and ordered a transcript record taken.⁸⁶ Agreement was never successfully reached, and methods of appointment were a constant source of friction.⁸⁷ In attempting to find a solution to the regional board's problems, the National Board wired,

... On appointments and promotions of staff employees it has been the practice of public members to consult with industry and labor on key appointments before they are made. There is no consultation on appointments and promotions of lower category CAF and professional employees for obvious administrative reasons.

In consulting on key appointments and promotions public members give heavy weight to the views of industry and labor members since it is obviously important that such personnel should enjoy confidence of both groups. However, it is recognized that final authority for such appointments rests with the public members.⁸⁸

The National Board did not finally resolve the issue of how regional board staff personnel were to be appointed until late in May of 1945. At that time it was decided that:

Appointments of Division Heads and Assistant Division Heads are to be cleared tripartitely by the appropriate Regional Board or Commission; all other appointments can be made without tripartite clearance.⁸⁹

The regional boards' difficulties in hiring arose more because of their internal structure than because of national restrictions upon their hiring authority.

The Civil Service Commission was an obstacle to regional boards when they sought approval for appointment of board and dispute panel members, who were employed on a WAE or *per diem* basis. It was necessary to appoint panel members quickly in order to resolve disputes, and prior clearance with the Commission was time-consuming. In addition, many of the industry and labor persons suggested for board and dispute panel membership could not meet the educational and experience requirements demanded for the positions as they were classified. "Be-

⁸⁶ RWLB X, *Verb. Trans.*, "Report of Committee on Administrative Management," dated July 16, 1943.

⁸⁷ See, for example, RWLB X, "Daily Board Action," dated April 5, 1944, and October 31, 1944.

⁸⁸ T. W. Kheel, Executive Director, to T. F. Neblett, RWLB X, Regional Chairman, Telegram, February 26, 1945. The National Board applied this policy to its own staff.

⁸⁹ NWLB, Field Memorandum, No. 123, Subject: "Tripartite Clearance of Appointment of Division Heads and Assistant Division Heads," dated May 29, 1945.

cause of the primary qualification that labor and industry members on these regional boards have the complete confidence of labor and industry groups concerned and because open competition is not feasible," the Civil Service Commission granted special dispensation for their appointment without its *prior* approval.⁹⁰ Public panel and board members with WAF status also were later appointed without prior clearance with the Commission.⁹¹ By February of 1945, regional boards might appoint *per diem* board and panel members of all represented groups without prior clearance by the Commission.⁹² This authority placed greater responsibility upon the regional board making the appointments and greatly facilitated its work.

IN-SERVICE TRAINING

The extent and methods of in-service training utilized by the regional war labor boards varied with the regions. The National Board made recommendations and suggestions, but no specific training techniques were imposed. In order to orient new employees to their jobs and in order to acquaint them with the operations at the board level, some regions allowed staff employees to watch the board at work.⁹³ A weekly staff conference to keep employees abreast of current developments in Board policy was the practice in some regions. The conference was mostly confined to the employees of the wage stabilization divisions and, to a limited extent, to the employees of the disputes divisions.⁹⁴ General staff meetings were usually called when a tripartite division of the National Board or an NWLB division director visited a regional board.

⁹⁰ L. A. Moyer, Executive Director and Chief Examiner, Civil Service Commission, to National War Labor Board, Letter, dated January 19, 1943. See also George Taylor, Vice-Chairman, to John McDiarmid, Civil Service Commission, Letter, dated January 14, 1943.

⁹¹ See L. A. Moyer, Executive Director and Chief Examiner, Civil Service Commission, to William H. Davis, Chairman, NWLB, Letter, dated October 12, 1943; War Labor Board to United States Civil Service Commission, Letter, dated December 10, 1943; and L. A. Moyer, Executive Director and Chief Examiner, Civil Service Commission, to William H. Davis, Chairman, NWLB, Letter, dated January 12, 1944.

⁹² T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Appointment of Board and Panel Members," dated February 16, 1945.

⁹³ RWLB IX, *Minutes*, December 18, 1943; T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Summary of Personnel Happenings in RWLBs during Month of December," dated January 26, 1945; and W. Brody to W. R. Little, Director, Administrative Management Division, Memorandum, Subject: "Visit to Detroit Office," dated March 21, 1945.

⁹⁴ Sylvester Garrett, RWLB III, Regional Chairman, to National War Labor Board, Memorandum, Subject: "Report of Regional Board III Activities for Week Ending August 6, 1943," dated August 7, 1943; R. K. Burns, RWLB VI, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Operations in Region VI for the Week Ending December 31, 1943," Not dated; and R. K. Burns, RWLB VI, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Operations in Region VI for the week ending November 5, 1943."

To further the staff's knowledge of industrial processes and hence to increase its ability to handle voluntary applications, several regions arranged for their employees to visit manufacturing plants in the immediate vicinity of the regional headquarters.⁹⁵ Temporary use of regional board personnel by the National Board provided a further method of training.

TURNOVER

The turnover rate of regional board staff employees was approximately the same as that of all federal government agencies.⁹⁶ There are indications that turnover rates were considerably higher for the regional boards than they were for the National Board.⁹⁷ In the middle of the year 1943, the National War Labor Board lost about twenty-five percent of its staff within one month.⁹⁸ Selective Service claimed many. This was also the period when regional staff morale was the lowest because of the indecisive and fluctuating nature of Board policy. To check its losses, the National Board in late 1944 imposed a restrictive release policy upon the regions. The Director of the Personnel Section in Washington was to approve releases of all persons holding positions classified at the level of CAF-11 or P-4 or above.⁹⁹ This policy was not effective in meeting the basic problem of separation, for during March, April, and May of 1945, the regional boards' staffs decreased by 66 employees.¹⁰⁰ Throughout most of its existence, the Board required fifteen days advance notice and a "suitable replacement" before any staff members were released.¹⁰¹

Some of the separations from Board employment were due to board and staff members' resigning to begin practice as industrial relations advisors. To prevent loss of its employees and to aid the integrity of its current employees, the NWLB provided that no former *per annum* employee could represent before the Board an applicant whose case was

⁹⁵ H. Buckman, Assistant to Industry Members, to Members of Industry Section, RWLB V, Memorandum, dated October 30, 1944; P. F. Nachtman, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Semi-Monthly Report of Regional Board for Period Ending February 29, 1944," dated February 29, 1944; and NWLB, "Newsletter," dated March 4, 1944.

⁹⁶ W. Brody, Personnel Director, NWLB, to W. R. Little, Director, Division of Administrative Management, Memorandum, Subject: "Turnover Rates," dated April 24, 1945.

⁹⁷ *Loc. cit.*

⁹⁸ NWLB, "Minutes of the Meeting of the Staff Policy Committee," dated July 16, 1943.

⁹⁹ NWLB, Field Memorandum, No. 51, Subject: "Transfer and Release of Employees in the National and Regional War Labor Boards," dated October 9, 1944.

¹⁰⁰ W. Brody, Personnel Director, to Fred Desmond, Deputy Executive Director, Memorandum, Subject: "Policy on Release of National War Labor Board Employees," dated June 4, 1945.

¹⁰¹ Lloyd K. Garrison, Executive Director, to Employees of National and Regional War Labor Boards, Memorandum, Subject: "Transfers and Releases of National War Labor Board Employees," dated September 17, 1943.

pending while the employee was on the staff. It further provided that no former *per diem* employee could represent an applicant, if the employee had acted in the same case on behalf of the Board.¹⁰² This rule was later extended to the employees of the Wage and Hour Division of the Department of Labor who handled the Board's Forms 1.¹⁰³ These restrictions did not prevent the resignation of many members of the wage stabilization and disputes divisions so that they could begin private practice. At least one chairman and one vice-chairman resigned board membership for this purpose.¹⁰⁴

TRANSFER

The National War Labor Board effectively provided for transfer of employees between the divisions of a single board and between different regional boards. It originally attempted to restrict regional freedom to transfer positions from one division to another division on a permanent basis.¹⁰⁵ However, this policy was short-lived, and regional boards were authorized to make such transfers regardless of the division in which the positions in question were budgeted.¹⁰⁶ Thereafter, transfers between the divisions of a regional board were readily effected. Some regions used temporary transfers as a means of relieving the congestion of work and of meeting special urgent problems.¹⁰⁷ Transfer of personnel among the regional boards was attempted on both a permanent basis when an employee was changing his residence¹⁰⁸ and on a temporary basis in order to relieve excessive backlogs in particular regions.¹⁰⁹

POSITION CLASSIFICATION

The National War Labor Board became involved in position classification as a result of the "transfer of certain field position classification functions for the Office of Emergency Management agencies . . . from the Central Administrative Services of the Office of Emergency Manage-

¹⁰² Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Resolution Concerning Practice Before the Board of Former Employees," dated December 30, 1943.

¹⁰³ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Extension of Board Resolution . . .," dated July 19, 1944.

¹⁰⁴ This problem is discussed by the National Board in *Verb. Trans.*, Div. A, June 22, 1944, pp. A-313 ff.

¹⁰⁵ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Allotment of Positions," dated June 23, 1943.

¹⁰⁶ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Maximum Utilization of Approved Clerical-Typist and Stenographic Positions," dated August 16, 1943.

¹⁰⁷ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, dated July 14, 1944, p. 69.

¹⁰⁸ As an example, see Dexter Keezer, Public Member, NWLB, to T. F. Neblett, RWLB X, Regional Chairman, Letter, dated May 13, 1944.

¹⁰⁹ For an example, see J. A. Hoskins, RWLB VII, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Report of Regional Board VII, for Week Ending July 24, 1943," dated July 24, 1943.

ment to the United States Civil Service Commission. . . ."¹¹⁰ Regional boards did not have the burden of developing position classification standards; they only applied the standards that were authorized by the National Board.¹¹¹ In filling jobs not specifically covered by standards promulgated by Washington, the regional boards were expected to submit their problems to the National Board's Classification Section for action.¹¹² The position of wage rate analyst in the wage stabilization divisions constituted the greatest problem in classification. The original standards were based on the type of case processed. The criteria of maladjustments and sub-standards were the easiest to apply, so positions that primarily involved them were allocated the lower grades.¹¹³ Because of rapid changes in Board stabilization policy during the first six months of 1943 and because after that time the majority of industry had exhausted its allotment under the Little Steel Formula, the nature of the wage stabilization work changed. As a result, changes in classification were in order.

The fact that corresponding positions in different regions were not classified at the same grades and that the jobs did not pay the same salaries was a source of difficulty.¹¹⁴ The problem arose because classification of the positions in each region was attempted separately, according to the responsibility of the job. This involved factors of case load and number of people supervised. Since these factors varied among regions, corresponding jobs were often a grade apart.¹¹⁵ All regional chairmen were eventually, though not originally, classified at the same grade.

The National Board initially requested different classifications and hence different salaries for regional industry and labor panel members than it did for regional public panel members.¹¹⁶ This differential was a source of irritation among panel members, and regional boards were quick to recommend its correction.¹¹⁷ By mid-November of 1943, the salaries of regional industry and labor panel members had been equalized

¹¹⁰ *Manual of Operations*, Section 6302.1, 3 *CFR*, *Cum. Supp.*, 9330, dated April 16, 1943.

¹¹¹ *Manual of Operations*, Section 6302.

¹¹² *Loc. cit.*

¹¹³ T. W. Kheel, Executive Director, to All Regional Chairmen, Memorandum, Subject: "Allocation Standards for Wage Rate Analysts," dated March 10, 1944. See also *Verb. Trans.*, Conference of Regional Personnel Officers, dated August 30, 1944, pp. 4 ff.

¹¹⁴ The Board's original requests for classification are contained in *Verb. Trans.*, January 9, 1943, pp. 710 ff.

¹¹⁵ See *Verb. Trans.*, dated August 20, 1943, p. 289; and Saul Wallen, RWLB I, Regional Chairman, to T. W. Kheel, Executive Director, Letter, dated November 20, 1944.

¹¹⁶ *Verb. Trans.*, January 9, 1943, p. 714.

¹¹⁷ As examples, see RWLB V, *Minutes*, March 25, 1943; and J. A. Hoskins, RWLB VII, Regional Chairman, to Carl Schedler, Deputy Executive Director, Memorandum, Subject: "Resolution of RWLB VII *in re* per diem Salary of Panel Members," dated July 5, 1943.

with those of regional public panel members.¹¹⁸ Since the National Board handled some dispute cases directly, it was possible for the same person when on assignment from Washington to receive greater compensation than when he was on assignment from a regional board.¹¹⁹

PROMOTION POLICY

When it was first given power over wage stabilization, the National War Labor Board offered promotional opportunities to its staff.¹²⁰ When the regional directors were first sent to the field, some of them even jumped two grades in classification.¹²¹ The Board's mature statement of its promotion policy required hiring officers to consult with the National Personnel Office prior to making any commitments to outside applicants.¹²² This statement set out several aspects of Board policy. First, primary consideration in the filling of any vacancy was to be given to present staff employees who were qualified to fill the position. Second, when two staff employees were equally qualified for a promotional vacancy, seniority was to determine who filled the position. Third, outside applicants would be considered only when "their qualifications are more specifically suited . . . or are clearly superior."¹²³ Promotion from within was available to an employee only after he had demonstrated his ability. And, last, in no instance was promotion to be made from within until an employee had had three months' experience in his job. The Personnel Division of the National Board could "in unusual or meritorious cases make exceptions" to the time-limits on promotions from within, but regional boards were not themselves granted this authority.¹²⁴ Regional boards were authorized to make "especially meritorious" promotions within-grade, but such action had to be approved by the National office. The regional board had to justify its recommendation on the grounds that funds were available under its budget allotment.¹²⁵

The combination of a policy of promotion from within, together with a rapid rate of separation, resulted in frequent promotions for staff members. During the first year of one regional board, one-third of the

¹¹⁸ L. A. Moyer, Executive Director and Chief Examiner, United States Civil Service Commission, to National War Labor Board, Letter, dated January 19, 1943.

¹¹⁹ See Louis Lazaroff, NWLB, to Waldo Holden, RWLB I, Disputes Director, Letter, dated May 15, 1943.

¹²⁰ John H. Meyers, Administrative Officer, to Staff, Memorandum, dated October 18, 1942.

¹²¹ *Verb. Trans.*, December 3, 1942, p. 436.

¹²² See Lloyd K. Garrison, Executive Director, to All Employees in Washington and the Field, Memorandum, Subject: "Statement of Promotion Policy," dated June 21, 1943.

¹²³ Lloyd K. Garrison, Executive Director, to All Employees in Washington and the Field, Memorandum, Subject: "Statements of Promotion Policy," dated June 21, 1943.

¹²⁴ *Manual of Operations*, Section 6305.

¹²⁵ *Ibid.*, Section 6305.3.

staff members were either promoted to higher classifications or had their jobs reclassified to a higher grade.¹²⁶ Those who were employed by the National War Labor Board prior to decentralization rose especially rapidly and high. At least three persons who began employment with regional boards in the grade of CAF-9 or P-3 advanced to positions carrying ratings of CAF-15. In spite of the willingness of the National Board and its regional boards to make promotions from within, when a man was advanced to a position that carried a salary higher than that which he previously held, the Board often found difficulty in clearing his appointment with the Civil Service Commission and hence in paying him the salary that accompanied the position's classification.¹²⁷ In several instances, this situation greatly affected regional board morale and resulted in threats of resignation.¹²⁸ Promotions involving transfers between regions and from Washington to the regions were frequent; however, there was occasional opposition to this policy.¹²⁹ Promotions from positions in the regions to Washington were less common.¹³⁰

THE WORK WEEK AND OVERTIME

Like other federal governmental agencies, the National War Labor Board employees worked an eight-hour, six-day week. In the early part of 1943, several regional boards modified this work schedule. Employees worked nine hours on five week days and three hours Saturday morning. There was no work on Saturday afternoons. The National Board soon halted this arrangement because of the establishment of the eight-hour, six-day week by the Bureau of the Budget.¹³¹ There are indications that this strict policy resulted in little production on Saturday afternoons. On some boards the wage stabilization division's employees voluntarily worked ten hours a day for short periods in order to reduce excessive backlogs.¹³² The National Board provided for the equalization

¹²⁶ J. A. Hoskins, RWLB VII, Regional Chairman, Memorandum, Subject: "Special Report from the Chairman to the Members of the Regional Board," dated November 23, 1943.

¹²⁷ Carl Schedler, Deputy Executive Director, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Conference of Regional Chairmen, September 18 and 19, 1943, Detroit, Mich.," dated September 20, 1943; and G. B. Noble, RWLB XII, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Weekly Report, December 25-31, 1943," dated January 1, 1944.

¹²⁸ "Transcript of Telephone Conversation between Mr. Kheel in Washington and Mr. Madden," June 22, 1944; and Byron R. Abernethy, Regional Wage Stabilization Director, RWLB VIII, to Floyd McGown, RWLB VIII, Letter, dated April 18, 1944.

¹²⁹ An effective example is Luther M. Slinkard, RWLB VII, CIO Board Member, to Russell S. Bauder, RWLB VII, Acting Chairman, Memorandum, Subject: "Wage Stabilization Division Personnel," dated June 26, 1945.

¹³⁰ Compare the experience of the Office of Price Administration in E. S. Redford, *op. cit.*, pp. 68 ff.

¹³¹ Lloyd K. Garrison, Executive Director, to All Regional Chairmen, telegram, dated May 19, 1943.

¹³² See *Verb. Trans.*, July 16, 1943, pp. 622 ff.; and R. K. Burns, RWLB VI, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Operations in Region VI for the Week Ending July 10, 1943," Not dated.

of these employees' working hours through compensatory time-off. However, this method was generally never effective. Monetary compensation for overtime work was available only if the division head or the regional director of administrative management gave "specific prior approval" for such work, and if no compensatory time-off had been given the employee within ninety days after he performed overtime work.¹³³ Hours worked by staff employees in the industry and labor offices of regional boards occasionally were sources of friction. In some regions industry and labor board members would not appear at their offices on holidays, and they instructed their secretarial and clerical assistants that they too need not appear.¹³⁴ This policy created morale problems for staff employees in other divisions who were obligated by law to work on all holidays except Christmas. When the practice became known, industry and labor staff employees were required to work the same hours as other staff employees.

UNIONS

The National War Labor Board had "union trouble." The employees of several regional boards organized in local affiliates of the federations, but they were denied recognition. The policy of the boards towards affiliated locals was summarized,

In view of the tripartite structure and the judicial functions of the National War Labor Board it cannot properly recognize or deal with any organization of employees affiliated with the American Federation of Labor or the Congress of Industrial Organizations or any other labor organization whose cases have been or may be handled by the Board.¹³⁵

Employees of several regions organized unaffiliated unions, some of which claimed credit for achieving effective working conditions for staff members.¹³⁶

THE SPRINKLED REDS

Regional board prestige suffered from the publicity that a few staff members were avowed Communists. The San Francisco *Chronicle* editorially accused the Tenth Regional Board of having "lots of Communists on its staff," but later retracted these accusations.¹³⁷ Several avowed Communists did work for regional boards, but when their party

¹³³ William H. Davis, Chairman, NWLB, to All Employees in Washington and the Field, Memorandum, Subject: "Overtime," dated June 12, 1943.

¹³⁴ *Verb. Trans.*, Conference of Regional Personnel Officers, August 30, 1944, p. 56.

¹³⁵ T. F. Neblett, RWLB X, Regional Chairman, to Board Members and Staff, "Policy Regarding Union Membership and Union Recognition," dated July 20, 1943. Similar positions can be found in RWLB III, *Minutes*, October 26, 1943; RWLB VII, *Verb. Trans.*, Special Session, November 18, 1943, pp. 34 ff; and *Verb. Trans.*, Div. B, September 12, 1945, p. 5.

¹³⁶ See National War Labor Board Employees' Union, Region II, "No More Lunch-Rest Room for W. L. B. Employees." This is a multigraphed "flyer."

¹³⁷ See *Verb. Trans.*, June 7, 1943, pp. 160 f; and *Ibid.*, June 9, 1943, p. 587.

allegiance became known, their separation was customarily effected.¹³⁸ Communist staff members of one board threatened other staff members who refused to take out cards in the party, but when this situation was aired, the board held a hearing and the practice was stopped. This situation resulted in the board's Vice-Chairman resigning and entering the Army.

Personnel administration within the organization of the National War Labor Board was generally typical of personnel administration within other wartime governmental agencies, which faced the same problems of separations and of dealing with the Civil Service Commission to effect promotions from within. Both the morale and the quality of regional board staffs varied considerably from region to region, with the result that the work of the regional boards was regarded by the National Board with varying degrees of favor. With the demise of the NWLB, many of its employees were transferred to its successor, the National Wage Stabilization Board, and the Board attempted to place others with different governmental agencies and with private industry.

¹³⁸ See T. F. Neblett, RWLB X, Regional Chairman, to William H. Davis, Chairman, NWLB, Memorandum, No Subject, dated December 10, 1943; William H. Davis, Chairman, NWLB, to Francis Biddle, Attorney-General, Letter, dated February 2, 1944; and George W. Taylor, Chairman, National War Labor Board, to Allison Rupert, Executive Secretary, Interdepartmental Committee on Employee Investigations, Department of Justice, Letter, dated April 5, 1945.

CHAPTER VII

TRIPARTITISM AND REGIONAL BOARDS*

When you get a tripartite Board it has been my observation here that efficiency of operation has a certain tendency to become secondary to the interests of the parties, and I think you have got to decide pretty deliberately whether you want to make it primary. . . .

—Dexter Keezer, *Verb. Trans.*,
Div. A, July 17, 1944, p. A-67.

Labor Unions and Chambers of Commerce have a tendency to educate their members politically after the fashion of the Jesuits: to indoctrinate them, in opposite directions.

—W. Y. Elliott, *The Pragmatic Revolt in Politics*
(New York: Macmillan, 1928), p. 434.

The field organization of the National War Labor Board had two outstandingly distinctive characteristics. First, a combination of administrative, quasi-legislative, and quasi-judicial power was delegated to boards in the field.¹ Second, the delegation to the field was complicated because the boards were *tripartite* in structure.

NATURE OF THE REGIONAL BOARDS

Usually when a national agency attempts any degree of decentralization, it delegates specific formal power in the field to a single individual or several different types of power to several different individuals who separately exercise authority within their respective jurisdictions.²

* In slightly rearranged form, some of the material in this chapter has been published in Allan R. Richards, "Tripartitism and Regional War Labor Boards," *The Journal of Politics*, XIV, No. 1 (February, 1952), pp. 72-103.

¹ Technically speaking, some regional boards might be more properly termed regional "commissions." The distinction between the two has been expressed in the following terms:

A board, properly speaking, is a group of members who are required to act collectively upon all matters falling within their jurisdiction. It may be that the members act individually in the way of securing data, conducting preliminary hearings, etc., but no action is taken by them except as a body. A commission is a group of members having the duty not only of acting collectively as a board, but also of serving individually as heads of organization units that have been set up for the performance of administrative work that has to be done. [W. F. Willoughby, *Principles of Public Administration* (Washington: The Brookings Institution, 1924), pp. 122 f.]

Labor and industry groups did head their respective offices which gave advice to parties having cases before the boards. Labor and industry members also acted separately in achieving compliance with boards' decisions. And in some regions the operating divisions were under the direct supervision of designated full-time public members.

² The National Labor Board did use a series of regional labor boards. H. G. Brainard, *op. cit.*, p. 119. And the Office of Price Administration delegated to local boards the power to approve consumers' rationing applications. E. S. Redford, *op. cit.*, pp. 85 ff.

Boards, as opposed to single individuals, delay decision- and policy-making, and they cost more money. A board carries more weight than the opinions of a single governmental official. For resolutions—especially those passed by a unanimous vote and more especially those passed by a unanimous *tripartite* vote—reflect the opinion of more than one man. Resolutions are apt to make headlines. One-man decisions are more apt to be on back pages. Boards also tend to achieve more status than the total of their individual members. And when they are attacked, the members of the board can resort to reciprocal backslapping in defense of their position.³ As a result, boards tend to act beyond their scope of authority and to achieve an independent individuality.

REGIONAL BOARD LOYALTY

The members of regional war labor boards were intensely loyal to their own boards when they were opposed to the policy of the National Board. Although loyalty to a region is not unusual in field offices, the local allegiance of regional board members was much beyond the usual extreme.⁴ A feeling of local autonomy pervaded the regional boards each time they were reprimanded by the National Board. The National Board recognized that the regions were developing "a feeling that they were out there on their own and were little independent entities."⁵ In 1943, Vice-Chairman Taylor noticed this tendency:

They [the regional boards] are beginning to feel that they are bigger than the Board, which is perfectly all right, but they also say, "To hell with your policies."

After all, they have to follow the policies that the Board has laid down. There has to be uniformity between Regions. They are not autonomous groups out there. . . .⁶

The regional boards generally regarded themselves as "hamstrung" by National Board policy and pointed out to Washington that their members were "the type of individuals who will not accept strict rules and regulations."⁷ However the National Board never succeeded in balancing reasonable regional conformity with National Board policy and reasonable freedom of regional action.

The regional boards' attitude toward National Board policy and their operational characteristics are evidence of local allegiance and of a feeling of autonomy. The regional war labor boards were victims of typical agency egotism. They felt that they were doing a much more effective

³ See George Taylor's farewell speech in *Verb. Trans.*, Div. A, October 12, 1945, p. 113.

⁴ Compare the War Production Board experience in Carroll K. Shaw, *op. cit.*, p. 55.

⁵ *Verb. Trans.*, July 16, 1943, p. 611.

⁶ *Verb. Trans.*, November 24, 1943, p. 507.

⁷ *Verb. Trans.*, February 18, 1944, pp. 1001 ff, particularly p. 1051. See also *Verb. Trans.*, April 10, 1944, p. B-6.

job of wage stabilization than the National Board. As the National Director of Wage Stabilization reflected the regional attitude,

They complain occasionally that the National Board decisions inconsiderately upset wage stabilization patterns which the regions have designed and worked out. They are not impressed by the argument that the National Board as "boss" is in a position to make departures, for political or other reasons, from its stated wage stabilization policy which the regions would not dare to make.⁸

The regional boards felt that they should be consulted before the National Board decided any inter-regional cases and all intra-regional cases over which the National Board on its own motion had assumed jurisdiction.⁹ The autonomous feeling of regional boards was so great that they often formally resolved to accept the directions handed down by the National Board.¹⁰ Regional boards were almost condescending in their acceptance of instructions from Washington. The following excerpt from the *Minutes* of RWLB I in Boston is typical:

Unanimously voted to convey to Theodore W. Kheel, Executive Director, that insofar as this Board is concerned, his statement regarding Public Information in Voluntary and Dispute Cases is a satisfactory policy and will be adhered to.¹¹

As a result of this exaggeration of their own importance, regional boards were more loyal to the Board in Washington than to the staff in Washington. They were reluctant to follow directions handed down by the National Board's staff and always wanted their minute problems handled at the Board level.¹² Loyalty to the National War Labor Board itself was also great when the NWLB was in the midst of one of its tiffs with the Director of Economic Stabilization. In these instances the National Board, in the eyes of the members of the regional boards, assumed much greater stature than when it was reviewing a regional board decision.

The autonomous feeling acquired by regional boards may be attributed to several causes. First, the mere existence of a board tends to promote group loyalty. Second, regional war labor boards had grown from regional advisory boards. The transition from a group without

⁸ Carroll R. Daugherty, Director of Wage Stabilization, to William H. Davis, Chairman, Memorandum, Subject: "Critical Problems of Wage Stabilization, Fall of 1943," dated September 13, 1943.

⁹ For example see Sylvester Garrett, RWLB III, Regional Chairman, to T. W. Kheel, Executive Director, NWLB, Memorandum, Subject: "Report of Regional Board III Activities for Period from April 1 through April 14, 1944," dated April 14, 1944.

¹⁰ As examples, see RWLB III, *Minutes*, February 21, 1945; RWLB I, *Minutes*, June 1, 1944; RWLB VIII, *Minutes*, February 1, 1944, and RWLB IX, *Minutes*, April 15, 1944.

¹¹ RWLB I, *Minutes*, June 1, 1944.

¹² For example see *Verb. Trans.*, Div. B, July 5, 1944, p. B-73. This problem is discussed in Chapter XIV.

power to one with power brought an exaggerated feeling of authority. Third, the regional boards were publicly glorified. Because of the publicity given the regional boards and of the exaggerated status and importance that the National Board members imputed to regional board members in order to maintain morale, a feeling of regional autonomy naturally developed. Fourth, the powers of regional war labor boards were generally more of the "reserved" type than they were positive grants. Especially is this true with regard to the boards' power to decide dispute cases. Fifth, since National Board policy was always indefinite and always changing, the regions often "found it necessary" to act on their own initiative.

TRIPARTITISM IN THE FIELD

Tripartitism—the second distinguishing characteristic of the field organization of the National War Labor Board created additional headaches. After it had been given the function of wage stabilization, the NWLB had probably become the first national tripartite agency in the United States to perform a combination of administrative, quasi-legislative, and quasi-judicial functions. Preceding it with varying types of authority over labor relations were various "tripartite" boards. These included the Industrial Board of New York,¹³ the Railway Labor Board,¹⁴ the National Railway Adjustment Board,¹⁵ the National Labor Board,¹⁶ and other labor boards under the NRA program,¹⁷ the Second Bituminous Coal Commission,¹⁸ and the National Defense Mediation Board.¹⁹ Previous to the creation of the regional war labor boards, only the National Labor Board had extended its structure into the field.²⁰ None of these boards, however, achieved distinction for their operation. In 1941, one leading student wrote:

All of the earlier national labor boards were organized on a representative basis. The members here were chosen to represent labor, employers, and the public. It is generally admitted that this is one of the main reasons why they worked so badly. They served a useful purpose as long as all they were supposed to do was to arbitrate disputes, for an arbitral tribunal must of necessity be representative in character. The boards broke down completely, however, as soon as any regulatory functions were assigned to them. . . . It may be concluded that representation of group interests is highly

¹³ Avery Leiserson, *Administrative Regulation* (Chicago: University of Chicago Press, 1942), p. 113.

¹⁴ H. D. Wolf, *op. cit.*, pp. 89 f.

¹⁵ R. G. Dixon, "Tripartitism in the National War Labor Board," *Industrial and Labor Relations Review*, II (April, 1949), p. 372, Footnote 2.

¹⁶ H. G. Brainard, *op. cit.*, p. 54.

¹⁷ See L. L. Lorwin and A. Wubnig, *op. cit.*, pp. 358 and 417.

¹⁸ R. E. Cushman, *op. cit.*, pp. 384 ff.

¹⁹ Louis J. Jaffe and William Gorham Rice, Jr., *Report on the Work of the National Defense Mediation Board, March 19, 1941-January 12, 1942*, Bureau of Labor Statistics, Bulletin 714 (Washington: Government Printing Office, 1942).

²⁰ H. G. Brainard, *op. cit.*, p. 54.

undesirable in the case of any governing body charged with duties of administration or regulation.²¹

The task of the regional war labor boards was greater than that of any national tripartite agency that had preceded them. Their authority was more varied and more extensive. And they operated at a lower level of the administrative hierarchy. With these difficulties, the regional war labor boards had Herculean tasks.

EXTENT OF NWLB TRIPARTITISM

In practice, tripartitism in the NWLB administration was not carried to its ultimate extremes, although in some instances it was carried to a ridiculous extreme.²² The industry and labor members had no formal place in and no active control over the day-to-day routine administration of wage stabilization policy. Unless a wage case were appealed to the regional board itself, the labor and industry members had no formal part in its processing. Only one staff member, theoretically impartial and hence theoretically representing the public, analyzed the cases, subject to review by other staff members. One former assistant to the labor members expressed the desire to see each case analyzed by a representative tripartite group.

THE NATURE OF TRIPARTITISM

In earlier paragraphs, the adjective "tripartite" has been used to refer to a number of historical agencies with many different characteristics. Reference to these agencies raises interesting questions. Is equality of membership necessary to tripartitism? The National Labor Board is referred to as tripartite, yet it had three representatives of employers, three representatives of employees, and only one impartial chairman.²³ The National Bituminous Coal Commission, tripartite, had two representatives of mine workers, two representatives with experience as producers, and three public representatives.²⁴ The National Defense Mediation Board allowed four members each to industry and labor, but only three to the public. William McPherson argues that the number of public representatives is unimportant to tripartitism.²⁵

Is there a tripartite structure when the public group appears only in the event of disagreement between the labor and industry groups? The

²¹ R. E. Cushman, *op. cit.*, p. 756.

²² In one instance, "The Board voted to appoint a committee composed of Messrs. Coffey, Cervin [Industry], and James [Labor] to draft a resolution of commendation to Rev. Street when his formal resignation is received. . . ." RWLB VIII, *Minutes*, January 23, 1945. In another instance, when an industry member of the board died, "It was AGREED to send a floral tribute, and to have Tripartite Board representation at the funeral services." RWLB I, *Minutes*, February 23, 1944.

²³ H. G. Brainard, *op. cit.*, p. 54.

²⁴ Avery Leiserson, *op. cit.*, p. 106.

²⁵ United States Department of Labor, Bureau of Labor Statistics, *Problems and Policies of Dispute Settlement and Wage Stabilization During World War II* (Washington: Government Printing Office, 1950), p. 229, Footnote 1.

National War Labor Board of World War I was in this category. It had ten impartial umpires who were used only when a deciding vote was needed.²⁶ Must the segments of a tripartite agency have equality of voting power, in addition to equality of membership? A proposal for the Esch Bill in the House of Representatives in November of 1919 would have created a nine man Railway Board of Labor Appeals having equal representation for employers, employees, and the public, but with "the representative of the public having no voice in a decision."²⁷

QUADRIPARTITISM

The regional war labor boards were composed of equal numbers representing the three groups. Tripartitism within the NWLB, however, had quadripartite aspects. One-third of the representation at the board table was labor, but labor membership was divided equally between the CIO and the AFL. Independent unions had no places at the board table, but they were allowed places on dispute panels and on board committees when cases involving independent unions were heard. They were, however, virtually represented at the board level. Van Bittner, a CIO member of the National Board, expressed it:

I think that the broad principle that ought to be assumed by the Board is that on this side of the table we are representing labor, not the CIO or AFL, but we are representing labor on this Board.²⁸

This idea was accepted both in theory and in fact. Because of the importance of encouraging high wage rates and because high wage rates could be used as comparative examples in arguing for increases for their respective unions—if for no other reason—AFL and CIO members had to argue effectively for the non-represented workers. And they did. Company unions participated in board activity only to the extent that they were applicants for wage increases or to the extent that they were involved in labor disputes. Unorganized labor was not recognized by a representative at the board table or on its panels. But is it possible to represent the unorganized?

In contrast to the quadripartite aspects at the board level, the tripartite dispute panels had only one labor member. He would be a CIO representative if the case involved the CIO, an AFL representative if the case involved the AFL, and an independent union representative, if the case involved an independent union. Seemingly, a public member represented the entire public and an industry member represented all industry. But a labor member "represented" only a specific type of labor organization, although he "voted" on cases involving all labor.

²⁶ *NWLB*, BLS Bulletin No. 287 (Washington: Government Printing Office, 1922), p. 10.

²⁷ H. D. Wolf, *op. cit.*, p. 80.

²⁸ *Verb. Trans.*, December 1, 1942, pp. 49 f.

On the regional war labor boards, the principle of equality of voting power was preserved. The public always participated in decisions. It may be concluded that the regional war labor boards were tripartite.

REASONS FOR REPRESENTATION IN ADMINISTRATION

Before answering the question, "Whom or what did the members of the regional boards represent?", the alleged purposes for and the reasons behind functional representation should be considered. First, the presence of group representatives on administrative boards protects and safeguards their interests. Second, representatives of interest groups can contribute special knowledge and experience. Thus decisions are practicable and workable. Third, the participation of interest groups in administration creates a shared responsibility for the content of policy.²⁹ Fourth, the participation of interest groups in the process of administration itself tends to keep group pressure within the administrative agency, to channel it. The agency thus usually becomes immune from political and public attack.³⁰ Fifth, the members of the groups represented tend to be more willing to conform to administrative policy. The program is more easily "sold." Problems of enforcement become less acute. Decisions are more readily acceptable.³¹ Sixth, interest group representation can result in the improvement of conditions that are the subjects of the agency's administration. "Instead of permitting the worst to set the standards for the best, it can assist the best in setting standards for the worst."³²

Even though these advantages for group representation have been compiled, it has been "the general opinion of students of administration that the representation of interests directly upon administrative boards is not particularly desirable."³³ Great Britain has also experimented with group representation, but it is

the present tendency . . . to abandon this form of organization in setting up the agricultural marketing boards and the agencies to control depressed industries, and to replace the so-called guild authorities with governmentally appointed, non-representative boards.³⁴

Regional war labor boards faced long odds!

The use of functional representation within the administrative structure raises many interesting questions. Administration, generally, is regarded as the process of carrying out a given policy, of implementing

²⁹ Avery Leiserson, "Interest Groups in Administration," in F. M. Marx (Ed.), *Elements of Public Administration* (New York: Prentice-Hall, 1946), p. 322. Also see Leiserson's *Administrative Regulation*, *op. cit.*, especially pp. 89 f, and John R. Commons and John B. Andrews, *Principles of Labor Legislation* (New York: Harpers, 1936), p. 446.

³⁰ Dexter Keezer, *op. cit.*, p. 242.

³¹ Luther Gulick, *op. cit.*, pp. 115 f.

³² John R. Commons and John B. Andrews, *op. cit.*, p. 447.

³³ Avery Leiserson, *Administrative Regulation*, *op. cit.*, p. 114.

³⁴ R. E. Cushman, *op. cit.*, pp. 565 ff.

the law, of applying general rules to a specific factual situation. If these are the functions of administration, one may wonder why formal group representation is necessary at all. American courts say generally that policy, intent, and standards must be present before delegation of authority to the administrative level becomes legal. If there is policy, should its implementation be to the benefit of any of a number of group interests? If policy, intent, and standards are adequate and if the necessity for administrative discretion in the application of that policy is recognized, should not officials representing the public alone be formally responsible for its implementation?³⁵

REPRESENTATIVE ADMINISTRATORS AND ALLEGIANCE

On an ordinary board or commission there is no specialized representation. The basic job of all members is to carry out the law. On a tripartite board, the component parts have two duties. First, they must carry out the law. Second, they must "represent" their constituents. Which obligation should be primary and which obligation has been primary in practice are the debatable questions. Is it possible for an interest group representative on an administrative board to regard a public office as a public trust and yet promote his group's position in opposition to the policy that is the subject of administration?³⁶ Is it possible for a representative to represent effectively his group interest and at the same time act as an efficient administrator by absorbing the limitations and standards of higher policy authority and by acting only within the scope of those limitations and standards? What policy does the representative pursue when the limitations and standards are in conflict with his group's interests? These are basic questions of group representation in administration.³⁷

In addition to the issue of direct representation, two other factors may determine the allegiance of board members: salary and method of appointment. The members of the National Railroad Adjustment Board were paid by the government out of the appropriation of the National Mediation Board.³⁸ The members of the National Labor Board and of OPA's local boards served without pay.³⁹ Commons and Andrews have concluded that "if they are compensated by the state their allegiance to their organization is weakened."⁴⁰ Representative members of the Railway Labor Board,⁴¹ the National Bituminous Coal Labor Board,⁴²

³⁵ See Fritz Morstein Marx, "Administrative Ethics and the Rule of Law," *American Political Science Review*, XLIII (December, 1949), pp. 1119-1145, esp. pp. 1132 ff.

³⁶ For example, see E. S. Redford, *op. cit.*, pp. 100 f.

³⁷ Experience with personal interest representation on administrative boards is discussed by Leiserson, *Administrative Regulation, op. cit.*, pp. 130 f.

³⁸ *Ibid.*, p. 121.

³⁹ Harry A. Millis and Royal E. Montgomery, *op. cit.*, pp. 574 f; and E. S. Redford, *op. cit.*, p. 25.

⁴⁰ *Op. cit.*, p. 449.

⁴¹ H. D. Wolf, *op. cit.*, pp. 89 f.

⁴² L. L. Lorwin and H. Wubnig, *op. cit.*, p. 430.

the Cotton Textile Board,⁴³ and the Arbitration Court of New Zealand⁴⁴ were nominated by their respective group interests and appointed formally by constituted governmental authority. Wartime experience, according to Luther Gulick,

does seem to indicate that such men [interest group representatives] when employed for administrative work in government should be recruited directly by the government, not designated by the organized interest group, and should then sever their relations with the interest group and become public servants fully and completely. This is, of course, not interest group representation. . . .⁴⁵

One is inclined to wonder whether severance of formal relations can black out years of experience and whether thoughts of future job opportunities would allow such persons fully and completely to ignore their past (or future) interests.

The experience of the National War Labor Board in making appointments has already been recounted.⁴⁶ Its experience in the payment of salaries is not uniform. On the National Board, most members were paid by the government. But the members representing the American Federation of Labor never accepted government pay for their participation; transportation and expenses were accepted. AFL members' basic salaries were paid by the Federation. On the regional boards some part-time members served without compensation, but the majority accepted *per diem* pay. In Region I, the CIO members of the Board accepted full compensation for their services, but donated the money to the Red Cross. They considered it "unethical" to accept two salaries.⁴⁷

PUBLIC MEMBERS AND PUBLIC INTEREST

The public members of the regional war labor boards were, as the title implies, to represent the public. Yet equality of voting power among the three groups seems to imply that the combined interest of labor and industry are greater than the public interest by a score of two to one. The basic and insecure assumption of tripartitism is that there is a fundamental incompatibility between at least some goals of the employer and some goals of the employees. The public representative acts as a moderator between the two positions considered to be opposite. The premise is that on at least some occasions industry and labor are at such fundamental extremes that they become unable or unwilling to compromise. The tripartite structure prevents public members from becoming *partisan representatives* of the public interest and causes them to be *non-partisan moderators* between the industry and labor members.⁴⁸ In order to prevent labor disputes that affect the

⁴³ *Ibid.*, p. 420.

⁴⁴ Harry Millis and Royal E. Montgomery, *op. cit.*, p. 795.

⁴⁵ Luther Gulick, *op. cit.*, p. 116.

⁴⁶ See pp. 82-84.

⁴⁷ RWLB I, *Minutes*, March 25, 1943.

⁴⁸ See George W. Taylor's comments in *Government Regulation of Industrial Relations* (New York: Prentice-Hall, 1948), p. 156.

public interest, it is assumed that the public representative will step up and work out a settlement. Is the public interest in labor relations nothing more than a compromise between industry's and labor's competing goals?

Even assuming that the compromised position of a public member does result in action for the public interest, one may ask, "How representative of the public interest were the public members of the regional war labor boards?" The members of the NWLB were not elected. Regional board members were appointed by the National Board within the limitations of civil service regulations. It is not customary to think of a federal civil servant "representing" any group, much less an area. Civil servants are expected to "act" in the public interest, not to "represent" the public. Indeed it is possible that the part-time public members were more "representative" of the public than the full-time members, but that the full-time members were more responsible for public policy. M. T. Van Hecke approached this conjecture before the National Board in the following words:

It is something like the jury idea. We [the chairman and vice-chairman] are supposed to be professionals; we are supposed to have some sinister hook-up with you fellows which these part-time people are independent of. I say psychologically, as a matter of public relations, decisions by Mr. Hepburn [the vice-chairman] and I don't go down quite as well as when at least one of these part-time public members assists and takes part in a decision. I think that they give a truly representative picture of public opinion in the Southeast as a whole that is exceedingly important on the whole labor front.⁴⁹

However, neither the part-time members of regional boards nor the full-time members of regional boards were "representative" of the public in the same sense that the industry and labor board members were "representative" of their respective interest groups.

GROUP ALLEGIANCE AND THE PUBLIC INTEREST

Interest group members serving on regional war labor boards were also expected to be primarily representative of the public interest. Prior to the establishment of the first regional board, Chairman Davis issued a statement in which he said:

The members of these Regional Boards will be serving not as representatives of a particular group, but as public spirited citizens acting for the Nation's interests in the same spirit that has been exhibited by the members of the National War Labor Board in its sessions. . . .⁵⁰

To the extent that they acted "in the same spirit" as members of the National Board, the regional board members fulfilled their task.

⁴⁹ NWLB, *Verh. Trans.*, Tripartite Division of the Atlanta Regional War Labor Board, January 13, 1944, p. 86.

⁵⁰ *Term. Report*, p. 571.

Whether they fulfilled the task that Davis is quoted as having imposed at another time is questionable:

You don't have a tripartite Board unless you expect the labor members to represent the views of labor and the industry members to represent the views of industry. Representing these views, we expect them to vote in the public interest.⁵¹

This was a difficult task, and only rarely—if ever—did industry and labor members perform it satisfactorily.

MOTIVATION IN DECISION-MAKING

Group representatives on regional boards, like all group representatives, tended to make decisions in terms of the consequences of their actions for their group. Dexter Keezer, public member of the NWLB, has analyzed the group representatives' rôle quite clearly.

The Industry and Labor members of the War Labor Board first acted as advocates using all the tricks of the trade and inventing new ones from time to time. Then they presumably switched to the rôle of judge, to pass upon the validity of their own arguments. . . .

The judicial rôle of the Industry and Labor members was largely a fiction. . . .⁵²

Decisions were often made on the basis of sanctions that might be imposed by the group.

Frequently an industry man or a union fellow has his judgment worked by the judgment of the reprisals after the judgment is over. A union fellow representing an International is in the position of believing something is right but being afraid of going along on it for fear of some action at home later—I know that to be my own case in industry, being forced to make a decision which might affect my own corporation later.⁵³

At a nationwide conference of regional board industry members, Lee Hill, an industry representative on the National Board "pointed out . . . that Industry members were called upon to vote as representatives of Industry as a whole, not as individuals."⁵⁴

In deciding cases and fundamental policy (insofar as the two could be separated in board activity), the action of industry and labor members clearly reveals an interest group loyalty paramount to NWLB program

⁵¹ Quoted by D. B. Harris, RWLB VIII, Chairman, Industry Members, in a speech entitled "What Industry Members of Regional Boards Expects of Public Panel Chairmen," delivered April 28, 1944.

⁵² Dexter Keezer, *op. cit.*, p. 241. Similar views are expressed by regional board chairmen in *Term. Report*, pp. 667 f and 756.

⁵³ Speech by Harold J. Madden, Industry Member, RWLB II, *Verb. Trans.*, "Anniversary Meeting," February 16, 1944, p. 285. See also RWLB III, *Verb. Trans.*, "Proceedings," April 21, 1943, p. 29, for a similar statement.

⁵⁴ H. Buckman, RWLB V, Assistant to Members Industry Section, Memorandum (Mimeographed), "Results of Nationwide Industry Members' Conference, August 28-30, 1944," dated September 4, 1944.

loyalty. However, once a case decision (as opposed to a policy decision) had been rendered, all members of the board, individually and collectively, usually supported the majority. The willingness of group representatives to encourage compliance with decisions with which they were not in accord was the strongest link in a weak chain, but it was not unbendable.

COMPLIANCE

The National Board's over-all record on unanimity in compliance cases is phenomenal. Voting against compliance with a previous decision of a regional board was exceptional. However, some labor members did individually approve work stoppages⁵⁵ and encourage "the union to refuse to comply with the decisions and orders of the governmental authorities involved."⁵⁶ Some industry members did individually encourage companies to refuse to comply with board orders⁵⁷ and did allow their own companies to defy board authority.⁵⁸ These exceptions were rare.

When the National Board noted that a regional board member had voted or acted against compliance, the respective national group would informally guide the wayward regional member into the correct channels or would informally guide him out of the organization. Each group on the National Board was responsible for seeing that his respective regional board group unwaveringly voted for compliance. Labor achieved this result through the confederations and the international union organizations, while industry had to rely more on personal relationships.

Since compliance cases were a minor part of regional board activity, it may be repeated that in the normal exercise of regional activity—in making case decisions and in deciding fundamental policy—the action of industry and labor members clearly reveals an interest group loyalty paramount to an NWLB program loyalty. This statement does not, however, question the basic loyalty of labor and industry groups to government. The allegiance of labor and industry groups to the United States—in war or in peace—is beyond doubt. And the boards' record on compliance seems to indicate a basic allegiance to the general program of the government. Another indication of loyalty to NWLB policy is that labor did not customarily arrange to have the "high wage thinkers" among the public members and the more "liberal" employer members at the same board meeting. Under such an arrangement labor could have achieved the most advanced of its demands.

INDUSTRY ADVISORY COUNCILS

In addition to partisan voting at the board table, other evidence indicates an allegiance to the interest group above the agency. The industry

⁵⁵ See, for example, *Verb. Trans.*, June 8, 1943, pp. 417 ff.

⁵⁶ RWLB XII, *Minutes*, February 2, 1944.

⁵⁷ *Verb. Trans.*, July 16, 1943, p. 665.

⁵⁸ *Verb. Trans.*, Div. A, August 30, 1944, pp. 294 ff.

advisory councils, organized past mid-year of 1944, accentuated allegiance to group interests. These councils, with slightly different names, existed in most regions. They were organized by the industry representatives on regional boards with the assistance of state chambers of commerce and trade associations.⁵⁹ These organizations were usually financed by funds voluntarily contributed by individual employers. The industry members of Region VIII in Dallas attempted to raise a fund of \$30,000 to \$40,000,⁶⁰ while the Industry Advisory Council of Region IV in Atlanta had a yearly budget of \$50,000.⁶¹

Industry advisory councils in the various regions served three purposes. First, they were to give advice on NWLB policy and procedure. Second, they were to give an opportunity to industry board members to get *all* the necessary facts from persons having applications before the board. In this manner the industry group could present its side of a case most effectively. Third, they acted as an organizational core for the collection of "industry opinion" that was to be used to guide or control the industry representatives in voting on case decisions and on policy decisions. The extent to which the industry advisory councils gave "advice and information" is a matter of question.⁶² Some councils went beyond the giving of advice and filled in the application after the prospective applicant submitted the necessary information. The manager or chairman of the industry advisory council was always an industry member of the board and usually the "captain" of the industry members. Thus the labor group often charged that votes were sold. There are indications that in some regions a fee was charged for specific services by the staff of the council. In other offices, the applicant could get individual assistance in filing his application and could talk with a board member who was to present it. But he was obligated neither to pay a fee nor to make any contribution. Since the manager or chairman was paid from the council's general fund, one may well question the propriety of his concurrently holding board membership. In these instances, was the member's allegiance to the interest group or to the board?

In some regions the activities of the industry advisory councils were, in part, financed by government funds. One board paid the salary of

⁵⁹ RWLB II, "Outline of Public Relations Policies of Industry Members of Second Regional War Labor Board," dated October 17, 1945. See also Porter A. Whaley, Executive Vice-President, Texas State Manufacturing Association, to "Gentlemen," Letter, dated June 8, 1944.

⁶⁰ *Loc. cit.*

⁶¹ H. Buckman, RWLB V, Assistant to Members Industry Section, Memorandum (Mimeographed), "Results of Nationwide Industry Members' Conference, August 28-30, 1944," dated September 4, 1944.

⁶² Compare RWLB IV, Regional Chairman, "Weekly Report," dated September 30, 1944; RWLB II, Employers' Advisory Council, No title, Mimeographed brochure explaining the functions of the Council, No date; RWLB II, "Outline of Public Relations Policies of Industry Members of Second Regional War Labor Board," dated October 17, 1945; Texas State Manufacturing Association, "Report of War Labor Board Committee," dated April 27, 1944; and RWLB VII, Committee to Investigate the Industry Advisory Council, "Minority Report," No date.

the industry members' executive assistant, and this employee acted as part of the staff of the council.⁶³ The government paid one industry board member on the days when he sat with the board, but the council paid him to work in its behalf on the days when he did not sit.⁶⁴

One region provided the council with stenographic service.⁶⁵ Other regions paid the office rent of their industry advisory councils; an extension line on the boards' switchboard was also provided free of charge.⁶⁶ The employees of one council "have been allowed complete access to all confidential memoranda, records, case files, statistical and research data, and have also been privileged free rein in any and all departments of the Board—even to the participation on staff committees as representing the industry board members."⁶⁷ But the files of some councils were regarded as confidential in nature.⁶⁸ The councils were staffed with former employees of the board. In one instance a board used the council as a dumping ground for its less effective personnel. One regional board chairman resigned and contracted with the council to act as consulting attorney. He received a remunerative retainer and specific fees for services performed. This regional chairman completely severed his formal connection with the board and took five of its employees to work with him.⁶⁹

The extent to which the vote of industry members was predetermined by advice or caucus is incapable of precise determination. The councils did advise the industry members. The industry members of the National Board held a dinner meeting every Wednesday night, and any interested employer was invited to attend. Advice was here given and received. In early 1944, the industry members of the National Board established a more effective liaison with the National Association of Manufacturers.⁷⁰ Labor vigorously opposed such concerted action, because it tended to create "rigidity of thinking," and it led in later days to the industry members' "insistence on uniformity."

But the activities of industry advisory councils and concerted action among employer representatives cannot all be related in red ink. When a public member objected to the industry members delaying their vote until the following day so that they could talk with other industry members, an employer representative replied:

Suppose it happens that on Tuesday I'm sitting, and a policy question [in a case] comes up and I decide it on Tuesday. All right, take another

⁶³ H. Buckman, RWLB V, Assistant to Members Industry Section, Memorandum (Mimeographed), "Results of Nationwide Industry Members' Conference, August 28-30, 1944," dated September 4, 1944.

⁶⁴ *Loc. cit.*

⁶⁵ *Loc. cit.*, and RWLB VII, Committee to Investigate the Industry Advisory Council, "Minority Report," No date.

⁶⁶ RWLB VII, *op. cit.*

⁶⁷ *Loc. cit.*

⁶⁸ RWLB VIII, *Minutes*, September 7, 1943.

⁶⁹ Porter A. Whaley, *op. cit.*

⁷⁰ *Verb. Trans.*, February 24, 1944, p. 496.

case that comes up on Wednesday, and two others decided the opposite. You've got to decide matters of policy in this Board as a whole. I take it you object to the fact that we got together on it. I think we've got to do that to get our thinking separately, then we come back and discuss these policy matters, and the majority holds. How can you expect two people of each side [those of one group comprising a quorum at any given time] to lay down policy that happens to come up, they being unprepared, under a specific case, and have that bind this whole outfit forever and anon just doesn't make sense to me.⁷¹

Through liaison with the councils some regions were able to find "better" industry members—those that would not automatically vote "No" on every decision. The board member who was in charge of the council office was able more effectively to educate other industry members to the policy of the Board, so that they would exercise their discretion in terms of that policy. When the public members wanted to "clear" anything with the industry group, the manager of the council office could and usually would act without delay. The existence of the council took the pressure of recalcitrant employers with cases pending away from the board staff. However, the extent to which a council provided these services for the board depended upon the individual strength and ability of the manager of the council office.

The very existence of industry advisory councils, operating as an arm of the board, tended to make the employer members conscious of their representation of industry, as opposed to their representation of public interest.

LABOR'S ADVISORY SERVICES

Neither were labor members on regional boards without guidance. For the most part, though, they were without the guidance of specially formed advisory councils. Lack of specific councils for the guidance of labor members may be attributed to two factors. First, the geographical areas of the NWLB field offices did not coincide with the regional structure within the internationals or the confederations. The few labor advisory councils were formed in mid-1944. In Region I comprising the New England states both the AFL and the CIO were serviced by advisory committees.⁷² Generally, the CIO used the advisory committee system more frequently than the AFL. Second, labor had less need of advisory committees than industry. Only the AFL and the CIO were represented, and both occasionally held national meetings attended by their representatives on regional boards. The representatives' locals and internationals could provide advice and control, if the unions thought it necessary. And it was more likely that the labor representative would hold the opinion of his group, since usually he was an elected

⁷¹ Remarks of John S. Zinsser, RWLB III, *Verb. Trans.*, Proceedings, March 16, 1943, p. 119.

⁷² Region I, AFL, WLB Advisory Committee, *Minutes*, June 10, 1944; and *Term. Report*, p. 603.

official of that group. For this reason too, he would be more likely to be controlled by it, informally at least. For the statistical information necessary to prepare a good case for a wage increase, the research divisions of the unions were much more capable than any service normally available to the employers. Information on comparative wage rates was much easier for organized labor to obtain.

LIMITATIONS ON PARTISAN ALLEGIANCE

Although industry and labor board members and their respective interest groups were closely allied, there was a legal extreme to the proximity of the relationship. It is customary practice in administration to disqualify for service those persons who stand to profit "by personal gain or pecuniary self-interest" through participation in commission activity.⁷³ For this purpose the War Labor Disputes Act provided:

No member of the Board shall be permitted to participate in any decision in which such member has a direct interest as an officer, employee, or representative of either party to the dispute.⁷⁴

As interpreted by the Board this section meant that no officer of a *local* union, no employee of a company, and no one (regardless of his official position) who had participated in the collective bargaining process that led to the dispute or to the voluntary application could participate in the board's handling of the case at either the panel or the board level. At one time the San Francisco Board attempted to tighten these legal restrictions. It provided that, without special consideration, neither could a member of an international union participate in a case involving a local affiliate of the international, nor could an industry member who was "from a firm which is an integral part of the same industry in the same area as the firm or firms involved in the dispute" participate.⁷⁵ The National Board set aside the regional ruling. On several occasions, the National Board reheard regional board cases because regional members participating in them had a "direct interest" under the terms of the Act.⁷⁶

The NWLB had two further rules regarding the participation of board members in board cases. Both were in effect prior to the War Labor Disputes Act. Both were adopted for "ethical" reasons. First, when a board member sat on a dispute panel, he was disqualified "from serving on the Board when the case came before . . ." it for final determination. Second, board members could not appear as advocates of parties to dispute cases, either before panels or the boards.⁷⁷

⁷³ Avery Leiserson, *Administrative Regulation*, *op. cit.*, p. 102. Also see R. E. Cushman, *op. cit.*, p. 757, and H. D. Wolf, *op. cit.*, p. 90.

⁷⁴ 57 U. S. Statutes 163, 166. Approved June 25, 1943.

⁷⁵ *Verb. Trans.*, Division B, September 20, 1944, p. B-205.

⁷⁶ T. W. Kheel, Executive Director, to T. L. Norton, RWLB II, Regional Chairman, Letter, dated October 30, 1944.

⁷⁷ Carl Schedler, Deputy Executive Director, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Conference with Regional Chairmen," dated April 20, 1943.

The ways of ethics are strange! The line separating the activities in which industry and labor board members could ethically engage and those in which they could not ethically engage was narrow.

The administrative techniques of some regional boards encouraged separate activity by the represented groups. The industry and labor staff assistants on some regional boards were prevented from using case files in which their interest groups were not directly involved.⁷⁸ However, specific requests for special permission were sometimes granted. Correspondence between applicants and the industry and labor groups was regarded as confidential and was kept apart from the case files until the case had been decided.⁷⁹

In the early days of the regional boards, industry and labor members were restricted from communicating directly with the analyst handling a pending case.⁸⁰ Limitation on this type of activity was necessitated because some industry and labor members attempted to influence the analyst in writing the analysis and hence to influence the board's decision. Some industry and labor members could approach an analyst and inquire about the status of a case without exerting any "pressure" whatsoever. They might get from the analyst a statement that under board policy the case would probably be denied. Then the partisan member could inform the applicant that he should attempt to reinforce his case. In other instances, industry and labor board members would attempt to intimidate and cajole staff members to write an analysis that would be favorable to their point of view. To relieve themselves of this pressure some regional wage stabilization directors would refuse to rule on such a case and would submit it to the board for action. This type of special influence led to the restrictive rulings.⁸¹

THE ETHICS OF THE PRIVATE INTERESTS

The question arises: If it is not ethical for a board member to appear as an advocate before the board, is it ethical for him to appear as advocate beyond the board authority? Apparently it was, for the labor board members openly encouraged their unions to break down Board policy by public attack. They openly described methods and tactics of achieving the maximum under Board policy. If labor were the greater offender, it was not because industry had greater conscience, but because the stabilization program was closer to the employer's peacetime practice of giving as little as possible, than it was to the union's peacetime practice of getting as much as possible.

The partisan members spent government funds in order to alter government policy! The practice of periodic "newsletters" was gen-

⁷⁸ Paul F. Nachtman, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Letter, dated May 23, 1944.

⁷⁹ RWLB VIII, *Minutes*, September 7, 1943.

⁸⁰ RWLB V, *Minutes*, March 9, 1943; and RWLB IX, *Minutes*, March 11, 1943.

⁸¹ Further examples of operational and organizational problems arising from the separateness of interests are distributed throughout this work.

erally adopted by both the national and the regional CIO board offices. The AFL members had no standardized policy, but confined themselves to personal letters to the internationals and to the Federation. In some regions, the newsletters were mimeographed and financed by labor organizations, but only because the facilities were not conveniently available in the regional offices. The newsletters summarized Board policy and were often highly critical of it. They told labor how to "beat" the policy.

Summarization of policy can be justified. Labor panel members should have been informed on current Board policy before attempting to make recommendations under it. But if information be the sole purpose of the newsletters, why could not they have been prepared by the regular board staff and distributed to all panel members, regardless of the group they represented? Why was the distribution list restricted to the labor group? Why was the information prepared by the executive assistants to the labor members? The process was a form of agency suicide. The government not only was encouraging its antagonists but also was giving them prestige, funds, and a voice in administrative policy determination.

The letters encouraged, incited, ordered external pressure to be brought against the policies of the NWLB.

Unions are instructed to write or contact the National War Labor Board, your Congressman, and President Truman to develop a fair reconversion Wage Program, instead of the present plan to allow wage reductions and inequities.⁸²

.....

The debate on a given issue must not begin and end in the Board room. It must be public, taking place in every union hall, and every available forum, and the justification of our position must be made clear and made to register with the full impact of logic and justice upon those charged with the public duty of Wage Stabilization.⁸³

In representing their constituents, the labor group apparently felt justified in actively encouraging increased work and an increased case load.

In order to obviate the possibility of all issues in a certified dispute case being settled by agreement between the parties with the result that no Panel Report or Directive Order would issue, I would suggest that you advise your unions to allow at least one issue to remain in dispute in order that the Board would be compelled to issue a Directive Order containing a stipulation as to the agreement reached on other issues.⁸⁴

.....

Now that the public members of the National War Labor Board have recommended to the President that the Little Steel Formula not be revised, it is more important than ever that we get the full benefit of any

⁸² RWLB X, CIO, "Newsletter," August 1, 1945.

⁸³ RWLB II, CIO, "Newsletter," March, 1944.

⁸⁴ K. J. Kelley, Executive Assistant to AFL Board Members, RWLB I, to J. J. Murphy, Regional Director, AFL, Letter, dated November 1, 1944.

fringe adjustments that are approvable under present wage stabilization policy. . . .

Let's get to work and get these fringe benefits into effect throughout the region.⁸⁵

Industry members also encouraged increased work. They suggested to local panel members that a unanimous decision by a panel was difficult to overcome at the board level.⁸⁶ A decision by a simple majority provided the board members with the tools for changing the panel recommendation into a decision more favorable to industry. Such tactics resulted in increased delay of board decisions.

Industry and labor members, and their staff assistants, occupied special positions in the NWLB hierarchy. Intercourse between the industry and labor members of regional boards and their respective groups at the national and panel levels tended to create separateness rather than unity.⁸⁷ The regional board members—industry, AFL, or CIO—held regional and national meetings with their respective groups. The first nationwide industry meeting was held at government expense, and a corresponding meeting held the next year was financed by the private resources of the industry members.⁸⁸ These meetings facilitated the exchange of information and encouraged industry solidarity.

SUMMARY AND CONCLUSION

The organization, procedures, and policies of regional war labor boards were greatly affected by their tripartite structure. Although the presence of the representatives of group interests probably enabled the boards to render better and more realistic decisions, it greatly hampered regional board operation and procedure. Tripartitism resulted in confusion, delay, and expense. With the exception of their action on compliance cases, the loyalties of industry and labor regional board members lay, in order, to their group interests, to the regional board with which they were associated, to the National War Labor Board, and finally to the public interest. The passage of time resulted in a greater reliance and dependence on consultation with interest group organizations, both within and without the NWLB structure. The passage of time also resulted in more consistency and greater unanimity of action within each group. If employer members seem to have paid a greater or lesser degree of allegiance to industry than employee members paid to labor, the action was a matter of chance—not design. Although both groups

⁸⁵ RWLB IV, CIO, "Newsletter," March 1, 1945.

⁸⁶ H. Buckman, RWLB V, Assistant to Members Industry Section, Memorandum (Mimeographed), "Results of Nationwide Industry Members' Conference, August 28-30, 1944," dated September 4, 1944.

⁸⁷ NWLB, "Newsletter," April 10, 1943.

⁸⁸ Fred Desmond, Administrative Management Division, to Chairmen, Regional War Labor Boards, No subject, dated November 18, 1943; and B. M. Joffe, Acting Director, Division of Administrative Management, to R. S. French, RWLB I, Director of Administrative Management Division, Memorandum, Subject: "Meeting of Industry Members," dated November 20, 1944.

were sincerely pledged to the war effort, both were equally pledged to protect their own "rights" and their own interests.

Although this order of loyalty generally holds true in analysis, the members of regional boards were, for the most part, men conscientious in their loyalty to the government and in their desire to prevent runaway inflation. Demonstrations of loyalties that indicated less than a representation of the public interest are explainable by honest differences in judgment held by the labor and industry members. One cannot divorce his past.

CHAPTER VIII

WAGE STABILIZATION: POLICY FORMULATION AND DELEGATION

... If anybody had sat here on Saturday or Sunday they couldn't help agreeing that the worst thing we can possibly do is try to give detailed instructions to these Regional Boards. I said to them, "What do you think we got you for, except to exercise your judgment?" And every time an order comes down from up here, you see, it is read carefully; every dot and every comma and every crossed "T" is taken apart, and the shorter the better.

*—William H. Davis, Chairman, NWLB,
Verb. Trans., May 18, 1943, p. 202.*

In the field of wage stabilization, the National Board can be of help in striving at all times to clarify and make explicit its own policy to the greatest extent possible. In trying to carry out National Board policy, the Regional Board is faced with the necessity of giving concrete expression to some general dictum of the National Board such as for example the prevailing practice in the industry or area.

A Regional Board's task would be much easier if it were in a position to answer the various \$64 questions upon the basis of more explicit basic criteria or as an alternative if it were permitted to interpret and apply the concept with the confidence that the National Board intends to back up the discretion at the Regional level.

*—T. L. Norton, RWLB II, Regional Chairman, Verb. Trans.,
Conference of Regional, Commission, and Panel Chairman,
January 12, 1945, p. 11.*

... This matter of dealing with specific and difficult questions by a species of double talk will get the Board into increasing difficulty.

*—Dexter Keezer, Public Member, NWLB, Verb. Trans.,
Conference of Regional, Commission, and Panel Chairman,
dated January 13, 1945, p. 93.*

Regional offices are not created to rest in desuetude. If they are to be useful to the central office, they must be put to work. If they are set up to decentralize the agency's program, they must be delegated authority to perform at least limited aspects of that program. But the central agency must control the region's activity in promulgating the program. Deciding what features of policy the regions should administer is itself a difficult task. But developing standards that maintain central control and allow regional discretion at the same time is an even more formidable task. The central agency that succeeds in satisfying both its own demands and its regions' requirements certainly goes to an administrative heaven.

The National War Labor Board originally intended to use its regions only to effect wage stabilization. In Chapter IV it was shown that as the Washington docket became more congested with wage stabilization cases, the National Board widened and extended the regional directors' authority to act. The techniques that were used to limit the regions'

power were many. They included restrictions on the basis of action involved in a case, the type of industry involved in the application, the number of employees hired by the company involved, the number or percentage of employees that were to be affected by the proposed adjustment, and the amount in cents or the percentage of the proposed increase. During this period of development, in the last months of 1942 and the early months of 1943, the National Board had granted more and more power to the regions, but it had not supplied them with criteria for its use.

THE STATEMENT OF MARCH 11, 1943

By March 1943 the regional war labor boards had been organized.¹ And again the National Board and its regional boards had congested dockets of voluntary wage stabilization cases.² At this time, Vice-Chairman Taylor suggested that the Board relieve itself of congestion in the regions by granting the newly created regional wage stabilization directors authority to rule on all cases affecting fewer than 200 people. At that time they had authority to rule only on cases involving fewer than 100. Taylor showed that more than 60 percent of the voluntary cases affected fewer than 100 persons, and that applications involving large numbers of persons were fewer than those involving smaller numbers of persons.³ An excessive case load led to the adoption of the "shortened-procedure."

The Board's statement, "Changes in the Handling of Voluntary Wage Adjustment Cases by the Regional War Labor Boards," was adopted on March 11, 1943.⁴ It was an attempt to provide an administratively feasible policy and procedure so that more cases might be ruled upon quickly. The shortened procedure broadened the jurisdiction of the regional wage stabilization directors, but preserved the right of appeal to the regional war labor boards. The directors were given authority to rule on all applications of employers who hired fewer than 200, regardless of the type of industry involved. This extension of authority did not, however, carry with it the automatic right to use the *shortened* procedure in all these cases.

MALADJUSTMENT

When a case was based on maladjustment (a cost of living adjustment, the Little Steel Formula) the directors were authorized to rule upon all cases in all industries, regardless of the number of persons

¹ The eleventh board to be formed was for the Ninth Region, March 1, 1943. The Twelfth Regional War Labor Board was not organized until March 21, 1943.

² "Voluntary cases" refer to those applications for wage and salary increases that involved no dispute between management and labor. They were "voluntarily" submitted. Voluntary cases were sometimes called "Form 10" cases, because the application that was submitted to the NWLB was designated "Form 10."

³ *Verb. Trans.*, March 5, 1943, p. 627. See the comments on OPA policy issues and administration in Redford, *op. cit.*, p. 51.

⁴ See *Verb. Trans.*, March 11, 1943, pp. 502 ff.

employed. This policy was adopted only after the Board had debated it at length. The original Garrison-Daugherty memorandum, which was adopted with slight amendment as the Board's statement of March 11, 1943, had recommended abandoning the Lever Bros. test in applying the formula.⁵ The Lever Bros. doctrine was that the Board would not grant any part of a 15 percent increase under the principle of the Little Steel Formula when the resultant increase would make the company's wage rates higher than the community average. At this time the most conscientious regional boards were conducting comparative studies in each maladjustment case to show that approving the adjustment would not cause the wage rates to be "out of line."⁶ This part of the Garrison-Daugherty proposal was not adopted by the Board.⁷

The AFL Board members, who abstained from voting on the statement of March 11, wanted to delegate more authority under the Little Steel Formula. They disagreed basically with the Board's statement because they thought restrictions upon the regional boards were unnecessary. They wanted the regional boards to decide all cases and to have the National Board act only as an appellate court.⁸ The AFL members suggested, in addition to a modification of the figure 15 percent to a "more realistic one," that the Board "permit employers to apply the maladjustment principle . . . without obtaining approval from the NWLB."⁹ They proposed that the Wage and Hour Division inspectors and the Wage and Hour Division offices tell the employer when he would be likely to violate the principles of the Little Steel Formula. The Board voted down this AFL proposal for two reasons. First, employers would never be able to figure out the formula. Second, the system would permit excuses for violation of the stabilization program and hinder enforcement.¹⁰ The maladjustment formula and the regional authority to apply it remained substantially the same throughout the existence of the Board.

THE SHORTENED PROCEDURE:

In addition to extending the types of cases upon which regional wage stabilization directors might rule, the March 11 statement allowed

⁵ Lloyd K. Garrison was at this time Executive Director, and Carroll R. Daugherty was Chief of the Review and Analysis Section, the National Wage Stabilization Director.

⁶ *Verb. Trans.*, March 11, 1943, p. 509.

⁷ Interestingly enough, because of gradually increasing wage rates, in July of 1944, "the Lever Bros. doctrine no longer applies to Lever Bros." And a regional board granted the Lever Bros. company an increase under the maladjustment principle. See T. W. Kheel, Executive Director, to George Taylor, Vice-Chairman, Memorandum, Subject, dated July 13, 1944; and Saul Wallen, RWLB I, Regional Chairman, "Weekly Report," dated July 7, 1944.

⁸ *Verb. Trans.*, March 11, 1943, pp. 522 ff.

⁹ *Verb. Trans.*, March 16, 1943, pp. 261 ff. The petition of AFL members is summarized in "The Attitude of the AF of L Toward the War Labor Board," typewritten, to be found in the files of the NWLB Historian.

¹⁰ *Verb. Trans.*, March 22, 1943, p. 57.

the use of a special, less time-consuming procedure on limited groups of cases. This was the "shortened procedure." In no case where price relief was involved might it be used. The procedure allowed the directors to rule upon the basis of the essential information in the application. They need not compile additional data from other sources. They need not make written analyses of the cases.

(1) SUBSTANDARDS

The first type of case to which the shortened procedure might be applied was that which involved an adjustment to correct substandards of living. The National Board authorized each regional board to determine what it considered to be a substandard rate for its area and to recommend the adoption of that rate to the National office. Until it confirmed the region's determination, the Board allowed the shortened procedure to be used on substandards cases that involved proposed rates below 50 cents an hour and \$20 per week. The Board clearly stated that the regions were not in any sense to be limited in their determinations by the figure of 50 cents. Since many regional boards were floundering because of lack of criteria by which to apply the substandard principle, the National Board wished to assure them that adjustments up to 50 cents were permissible.¹¹

(2) INEQUALITIES AND SMALL GROUPS

Second, under three conditions the shortened procedure might be applied to adjustments to correct inequalities of individuals and small groups. These were: (A) the application must have been filed by an employer with 200 or fewer workers; (B) the adjustment proposed must affect not more than 10 employees *or* not more than 10 percent of the plant's employees; *and* (C) the proposed adjustment could not exceed 5 cents per hour. The Garrison-Daugherty memorandum had proposed that condition (B) limit the adjustment to not more than 5 employees *or* not more than 5 percent of the employees. In order to allow the regional wage stabilization directors to rule upon more cases, Wayne Morse, public member, suggested the 10 cent-10 percent limitation that was adopted.¹²

Regional boards were quick to allow their regional wage stabilization directors to make further rulings in this category of cases. Less than ten days after the shortened procedure had been adopted, the Boston Regional Board authorized its wage stabilization director to rule on all cases involving not more than 10 employees, regardless of the number employed by the company.¹³ As a result of a meeting of regional

¹¹ *Verb. Trans.*, March 11, 1943, pp. 528 ff. The regional boards' problems with substandards are discussed further below.

¹² *Verb. Trans.*, March 11, 1943, p. 512.

¹³ *Verb. Trans.*, Meeting of RWLBs East of the Mississippi, March 20, 1943, pp. 11 f. Wayne Morse criticized this usurpation of authority, but the Board took no specific action.

chairmen and as a result of the Board's experience that its current delegation was not reducing its caseload, the original limitations on the use of the shortened procedure were extended three weeks after its initial adoption.¹⁴ Regional wage stabilization directors were authorized to use it in all cases where the company employed *not more than 200* persons, regardless of the number of persons for which the adjustment was requested or of the amount of the proposed adjustment. In those cases where the company employed *more than 200* persons, the shortened procedure might be used only when the adjustment affected not more than 10 percent of the workers and when it did not exceed 5 cents per hour.

When a regional wage stabilization director used the shortened procedure under this authority, his ruling was issued under limited conditions. These limitations were that the ruling might not be used as a basis for a subsequent claim of inequalities and that within the subsequent six months period the director would not use the shortened procedure on any other case of the same employer.

(3) 'INEQUALITIES AND "THE MOST FREQUENT RATE"

Third, the shortened procedure might be used to decide cases in which the proposed adjustment did not bring the rates "up to the most frequent rate . . . for the same or substantially similar occupations in the industry, or industries generally within the community or labor market area." The regional boards were to determine labor market areas. To obtain the necessary comparable information so that the procedure might be utilized with assurance, the regions were to use the information available from Wage and Hour Division files, the Bureau of Labor Statistics studies, expert knowledge of board members, and material obtained from hearings held by tripartite panels.

Of the Board's criteria for allowing wage adjustments, the application of the inter-plant inequalities principle was the most difficult. Prior to Executive Order 9328 for cases to which the shortened procedure was not applicable and prior to the adoption of the shortened procedure for all cases, regional boards had few administrative standards by which to evaluate an inequalities argument. The statement of principles that purported to explain inequalities was vague and indefinite. If there were a policy and if it were knowable, it could be concretely found only by inspection of a long series of decisions in dispute cases.

In considering a claim of inequalities, the applicant's present and proposed wage rates were generally compared with a weighted average of wage rates paid for the same or similar occupations within the labor market area. Application of the principle raised many questions for which the regional boards had no answers. What industries were comparable? Should the wage rates for maintenance carpenters in a retail

¹⁴ *Verb. Trans.*, March 29, 1943, p. 74.

department store be substantially similar to those of a maintenance carpenter in a shipyard where the rates were substantially higher? Must only jobs within the same industry be deemed comparable? What was the labor market area?

Even after a regional board had interpreted, to some slight degree, what the general rules were supposed to be, their implementation added further administrative problems. Regional boards did not have complete files of all wage rates paid by all businesses within their territorial jurisdiction. The information they had was slight. In important cases involving a great number of employees, the regional board might request a survey by the regional office of the Bureau of Labor Statistics. These surveys took months to complete and they could be used for only an exceedingly few cases. The Form 10, the application to make a proposed increase, had space for the applicant to indicate rates paid by the companies with which he was competing for labor. Experience proved that the information provided by the applicant was for the most part useless. It was inaccurate. It was incomplete. It was selected to fortify the employer's position. It was usually not comparable. And when employers attempted to get comparable information, they found their competitors reluctant to provide it. To add to the general administrative dilemma, the guidance that did come down from Washington indicated that wage increases were allowable under the inequalities criterion only if the historical differential between competing plants remained undisturbed.

As a result of the difficulty of getting sufficient and accurate information, the regions either had to place a heavy burden of proof upon the applicant or had to be overcome with backlogged cases. They first chose the former.¹⁵ The regional chairmen adopted a form letter to deny applications in which the information submitted was not adequate to process the case. In Board circles this became known as the "Zilch letter." A Zilch denial was predicated in part upon the assumption that the applicants would prefer a quick "No" to a very slow "Yes."¹⁶ To the extent that regional boards used Zilch letters at the same time that they were requesting BLS surveys, they were acting at cross purposes. To the extent that the Zilch letter was used, the ratio of disapprovals to approvals was high.

The language used by the National Board in setting forth its general principles resulted initially in a great number of disapprovals. Actually, the National Board had a very loose inequalities policy, but it was housed in language that sounded as if it were an exceedingly tight policy. This situation made the program of the National Board difficult to effect in the regions—especially in the early days.

¹⁵ W. N. Loucks, RWLB III, Wage Stabilization Director, to Staff, Memorandum, Subject: "Conference with Daugherty," dated January 23, 1943.

¹⁶ *Verb. Trans.*, January 29, 1943, p. 694.

The regions constantly clamored for clear definitions, criteria, standards.¹⁷ And the National Board, until the necessity was forced upon it, consistently refused to provide them. National Board members argued that "mathematical rules" were impossible to formulate for use in inequalities cases. One public member explained the Board's attitude toward the formulation of standards for inequality cases:

I don't think we ever will get to the point on inequalities where a rule can be substituted for judgment.

I think that the only thing that could be given as a guide to you on that is that the statement of policy of the Board, which was that wages just have to be stabilized—and we think that certainly any one increase that would start or further a spiraling of wages would certainly be inconsistent with the inequalities definition.

If you made the full economic analysis that was necessary to decide a case on this historical approach, you probably would never get your study out, let alone a decision made, and in this whole business I personally have come to have a very high regard for hunches, if you want to call them that, or a general "feel" of both labor officials and businessmen who are looking down and facing a problem, because their hunch is not just a sort of capricious thing, but the result of the impact of a lot of forces which they subconsciously appraise, and I know those of us who sit on the Board, know that I would feel impelled not to vote for an inequality increase if I were convinced that it was going to start a wage spiral, and that is primarily the thing that we want to stop.¹⁸

Although educated judgment (hunches and "feel") is necessary in making many administrative decisions, only the victims of administrative naïveté could suggest its delegation to hundreds of field officials. Further, if the criterion by which an inequalities application were to be considered were educated judgment, then it must be possessed by the wage analysts, who actually processed the cases, as well as by the Board members. It was pointed out in Chapter IV that the regional board members who represented industry and labor were not chosen because they possessed an "educated judgment."

After the adoption of the shortened procedure under which cases involving adjustments that did not bring wage rates beyond "the most frequent rate . . . for the same or substantially similar occupations in the industry . . ." were decided, the National Board remained reluctant to provide adequate standards. The regions did not know the meaning of the "most frequent rate,"¹⁹ but the Board was unwilling to agree upon more precise definitions for fear that the regions would establish one set rate for each job.²⁰

¹⁷ *Verb. Trans.*, February 11, 1943, pp. 477 ff.

¹⁸ *Verb. Trans.*, Meeting with Regional Chairmen, January 10, 1943, pp. 121 ff.

¹⁹ T. W. Kheel, RWLB II, Regional Chairman, to Lloyd Garrison, Executive Director, Memorandum, No Subject, dated April 3, 1943.

²⁰ *Verb. Trans.*, March 22, 1943, p. 71.

EXECUTIVE ORDER 9328:

The President's "hold-the-line order" applied brakes to the NWLB's inflationary policy of inequalities. Executive Order 9328 eventually resulted in the National Board's establishing more detailed standards of guidance for the regional boards. Indeed what the NWLB could not, or would not, do for itself was in part forced upon it by this Order. The Order read:

The National War Labor Board . . . [is] directed to authorize no further increase in wages or salaries except such as are clearly necessary to correct substandards of living, provided that nothing herein shall be construed to prevent such agencies from making such wage or salary readjustments as may be deemed appropriate and may not have heretofore been made to compensate, in accordance with the Little Steel Formula as heretofore defined by the National War Labor Board, for the rise in the cost of living between Jan. 1, 1941, and May 1, 1942. Nor shall anything herein be construed to prevent such agencies, subject to the general policies and directives of the Economic Stabilization Director, from authorizing reasonable adjustments of wages and salaries in case of promotions, reclassifications, merit increases, incentive wages or the like. . . .²¹

In effect, this "hold-the-line order" removed from the jurisdiction of the NWLB the power to permit wage increases upon the basis of the inequality and inequity criteria.

(1) SIGNIFICANCE TO THE NWLB

Executive Order 9328 is a landmark in NWLB history. Because of it the nature of the Board's functions was drastically altered. Prior to Executive Order 9328 the National War Labor Board had, in effect, formulated the wage policies that it was administering. The types of wage adjustments that were permissible under Executive Order 9250, dated October 3, 1942, were those that the Board had been applying in dispute cases from its creation in January of 1942 until October 3, 1942. Even the language of Executive Order 9250 was couched in terms of the Board's words. Executive Order 9328 marked the first time in NWLB history that a policy not of its own choosing was imposed upon it. If there be value in having interest groups participate in the formulation of policy, then after Executive Order 9328 these advantages began to decrease in importance.²² Hereafter, the Board did not have a free hand in establishing policy. It could act only within a limited scope of authority.

(2) REACTION OF THE NATIONAL BOARD

The reaction of the National War Labor Board to the Order was one of shock, anger, frustration. Emotional diatribes against the President

²¹ 3 CFR, Cum. Supp. 9328, dated April 8, 1943.

²² On this point see Avery Leiserson's conclusions in *Administrative Regulation*, op. cit., p. 123.

and the Director of Economic Stabilization were the order of the day. "They can't do this to us" typified the Board's attitude. "It will destroy the economy" was the Board's cry. At its first opportunity, the Board appointed a tripartite committee to visit Director of Economic Stabilization Byrnes and to begin a campaign for modification of the Order by interpretation.

(3) EFFECT IN THE REGIONS

In the regions, the period between the issuance of Executive Order 9328 on April 8, 1943, and the Byrnes modification of the Order that restored the Board's power over inequalities by a different method was characterized by chaos. Regional boards were caught with huge backlogs of literally thousands of cases. Was it equitable to penalize the early applicants simply because the Board had not developed adequate machinery to process their cases? The National War Labor Board voted that whether equitable or not the regional boards were authorized only "to release rulings to the parties which were arrived at prior to 7:30 Eastern War Time of April 8, but were not written up or communicated to the parties."²³ Although the regional boards continuously requested permission to rule on all their backlogged cases,²⁴ the National Board did not modify its general ruling, except in specific instances involving regional procedural differences.²⁵

After the NWLB had received Executive Order 9328, it immediately stopped the processing of cases. The Wage and Hour Division Administrator was asked to inform his field offices to "continue to receive but . . . [not to] act upon the Forms 1 that are submitted to them."²⁶ In this same evening session, the regional boards were wired,

In view of the President's new Executive Order of this evening you are hereby directed by the NWLB to proceed as follows on all pending cases:

1. Continue to prepare all your cases for disposition as heretofore.
2. Make no decision for wage increases whatsoever except those that clearly come within the 15% limitation of the Little Steel Formula.

Further directions with respect to the new Executive Order will come in a few days.²⁷

Shortly afterwards the National Board altered its instructions and ordered the regional boards to deny all interplant inequality cases on the basis of Executive Order 9328.²⁸ At a regional conference, the Chairman and the Vice-Chairman of the NWLB further confused the situation by giving the regional chairmen conflicting advice. The Chairman told the participants that they were to deny *all* inter-plant inequality

²³ *Verb. Trans.*, April 10, 1943, p. 862.

²⁴ *Verb. Trans.*, April 19, 1943, pp. 12 ff.

²⁵ For example, see *Verb. Trans.*, April 21, 1943, p. 315.

²⁶ *Verb. Trans.*, April 8, 1943, p. 638.

²⁷ *Ibid.*, p. 636.

²⁸ This telegram is discussed in *Verb. Trans.*, April 19, 1943, pp. 16 f.

cases. But the Vice-Chairman informed them that they were to deny only those cases that they would have denied under Executive Order 9250 and to shelve those cases that they would not have denied under that Order.²⁹ The result was that some regions took advantage of this opportunity to reduce their backlogs. One board disposed of over 1,000 dockets during one week by denying inter-plant inequality cases under Executive Order 9328.³⁰ Other regions refused to make such denials on the grounds that "if we deny them now, the thing would explode in our face."³¹ As a result of this situation, the Executive Director commented, "I think that what actually is happening in the Regions is that the chairmen are using their own judgments."³²

In order to effect uniform procedure among the regional boards, the National Board later modified its policy to provide that:

1. Wage increases which are allowable under the literal provisions of Executive Order 9328 will be ruled on currently.

2. Wage increases, whether disputed or voluntary, which are not allowable under the literal provisions of Executive Order 9328 will not be ruled upon until the wage policy under Executive Order 9328 is further clarified.³³

The National Board also directed the regions to keep careful records of cases that had already been denied under Executive Order 9328 so that if the policy were changed the denials could be corrected. The Board also authorized the regions to rule upon cases involving other than "wage" issues.³⁴ By this time too the Wage and Hour divisional offices were ruling upon cases involving new wage rate schedules, merit increases, job reclassifications, and the like.³⁵

During the period between Executive Order 9328 and the Byrnes clarification, regional board morale fell to a record low. The shock of the Order, which made the wage analysts' jobs those of mathematical clerks, was aggravated by recurrent shifts in the instructions from Washington. Many changes in National Board policy accomplished little. In reference to one change in policy, a National Board member remarked, "That will keep them at work, and hard work is the thing that keeps people out of mischief."³⁶ But the regional staffs realized that they were doing "busy work," and morale deteriorated even further.

Part of the morale problem in this period was engendered by mal-

²⁹ *Verb. Trans.*, April 19, 1943, p. 17.

³⁰ *Verb. Trans.*, April 19, 1943, p. 34. See also J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, "Report of Regional Board VII for Week Ending April 30, 1943," dated May 1, 1943.

³¹ *Ibid.*, p. 16.

³² *Ibid.*, p. 17.

³³ Lloyd K. Garrison, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Processing of Wage Matters under 9328," dated April 27, 1943.

³⁴ *Loc. cit.*

³⁵ *Verb. Trans.*, April 29, 1943, p. 528.

³⁶ Van A. Bittner, CIO Member, *Verb. Trans.*, April 19, 1943, p. 31.

administration within the regions. Most of the regional wage stabilization directors were new at their jobs. Many were ex-professors with little or no administrative experience in academic circles or in government bureaus. As a result, many were poor administrators who had not learned to delegate authority. Some insisted upon personally reviewing all cases that were ruled upon under their names. Insistence upon personal review led to the accumulation of a backlog within the private office of the wage stabilization director. Since the basis for analysis was changing every week and since the wage stabilization director was more than a week behind in his rulings, wage analysts were forced to reanalyze the cases as many as six or seven times in order to conform to current Board standards. This process of reanalysis took its toll of morale victims. The regional chairmen characterized this period with the phrases: "a sense of frustration," "futility," "demoralizing," "most unhappy lot of people you ever saw in your life," "in angry frustration," "marking time," "shell shocked."³⁷

THE BYRNES CLARIFYING DIRECTIVE: (1) ORIGINS

While the regional boards were relatively in the throes of desuetude, the National Board in Washington was pressuring the Director of Economic Stabilization to modify Executive Order 9328. The loophole, which was finally provided by the Byrnes office in the phrase "sound and tested going rates," had its inception in a proposal that had been made by Carroll Daugherty, Chief of the Review and Analysis Division, in the first months of 1943. Daugherty characterized the Board's inequalities policy as "neither administratable nor wage-stabilizing."³⁸ He argued that the present policy would "create a lot of inequalities," that it was impossible to get sufficient information to process the cases adequately, that there were not enough competent economists in the country to effect it, and that its continuance would result in completely unmanageable caseloads.³⁹

Daugherty first presented his recommendation for the establishment of a "prevailing rate system" to a conference of regional chairmen who

³⁷ These comments may be found in *Verb. Trans.*, Regional Conference, April 17, 1943, pp. 104 and 123; R. K. Burns, RWLB VI, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Operation in Region VI for the Week Ending May 8, 1943," Not further dated; RWLB III, *Verb. Trans.*, Proceedings, April 21, 1943, p. 41; NWLB, "Newsletter," May 15, 1943, p. 2; R. K. Burns, RWLB VI, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Operations in Region VI for the Week Ending May 15, 1943," Not further dated; and J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, "Report of RB VII for Week Ending April 24, 1943," dated April 24, 1943.

³⁸ Carroll Daugherty, Director of Wage Stabilization, to NWLB, Memorandum, Subject: "Proposal for New Definition of 'inequalities and inequities' under Board's Wage Policy," dated February 10, 1943. Daugherty hastily reviews this development in RWLB VI, *Verb. Trans.*, January 19, 1945.

³⁹ *Verb. Trans.*, January 29, 1943, pp. 691 ff.

endorsed it. He then presented the idea in a memorandum⁴⁰ and brought the matter to the Board's attention in the form of a telegram from the Chairman of Region V.⁴¹ As Daugherty summarized his plan:

The essence of the plan suggested here is that in each locality or labor market area the prevailing rate or range of rates is to be discovered as of a certain current date for each of a list of selected major occupations, and that an applicant employer whose rates or rate ranges for these occupations are below the prevailing rate or range of rates be permitted to raise his rates up to the prevailing one.⁴²

The labor members immediately objected to the plan because unions typically received the highest wages and thus they would be prevented from receiving increases.⁴³ Chairman Davis would have attempted to solve the caseload problem by placing the burden of the proof of inequality upon the applicant.⁴⁴ Daugherty was informed that his suggestions were not "feasible" at that time.⁴⁵ His recommendations and Davis' counter-proposal were dropped temporarily, and the Chairman was authorized to work out a compromise between Daugherty's idea of prevailing rates and his own ideas on burden of proof.⁴⁶

A partial compromise was effected. For the shortened procedure was made applicable to cases in which the proposed adjustment did not bring the rates "up to the most frequent rate . . . for the same or substantially similar occupations in the industry, or industries generally within the community or labor market areas." Even before the shortened procedure had been adopted, some of Daugherty's ideas had been put into effect by the regions. Some regions were deciding inequalities cases on the basis of their knowledge of "clusters" of existing rates. Others were continuing to use weighted averages as a comparative basis.⁴⁷

(2) MAKING UP BYRNES' MIND

As a substitute for the restrictions of Executive Order 9328, the Board tried to get Byrnes to adopt a bracket system like Daugherty's Plan.⁴⁸ To prepare its arguments, the National Board requested the regional boards to "pick out those cases that they considered the gross-est kind of inequities as a result of a literal application of the order . . . and to send them to Washington."⁴⁹

⁴⁰ Carroll Daugherty, Director of Wage Stabilization, to NWLB, Memorandum, Subject: "Proposal for New Definition of Inequalities and Inequities under Board's Wage Policy," dated February 10, 1943.

⁴¹ *Verb. Trans.*, February 11, 1943, pp. 481 ff.

⁴² *Ibid.*, pp. 482 ff.

⁴³ *Ibid.*, p. 558 a.

⁴⁴ *Ibid.*, pp. 490 ff.

⁴⁵ RWLB VI, *Verb. Trans.*, January 19, 1945.

⁴⁶ *Verb. Trans.*, February 11, 1943, pp. 558 a ff.

⁴⁷ *Verb. Trans.*, March 10, 1943, p. 315.

⁴⁸ *Verb. Trans.*, April 14, 1943, p. 484.

⁴⁹ *Verb. Trans.*, April 16, 1943, p. 716

Vice-Chairman Taylor was authorized to prepare a memorandum presenting to Byrnes the Board's opposition to the Order and its suggestions for modification. In effect, he was to rework Daugherty's proposal, which was then two and a half months old. After several drafts were presented to the Board, the Taylor memorandum, "Policy of the National War Labor Board under Executive Order 9328," was completed.⁵⁰ The proposal was not initially acceptable to the industry members, although after writing an accompanying memorandum they agreed to it. Industry objections to the plan may be summarized from their analysis:

WHY ARE WE ASKING FOR RESTORATION OF OUR AUTHORITY . . . Frankly, we are asking a return of authority over inequalities because of pressure by employers for wage increases to influence flow of manpower and pressure by unions to justify service to their members.

In fairness it must be pointed out that the proposed method of measuring inequality adjustments is not nearly so inflationary as our old practice, but is inflationary. . . .⁵¹

Tripartite committees of Board members held several meetings with the Director of Economic Stabilization. At first he was reluctant to alter the intent of the Order but he was gradually persuaded to do so. Byrnes initially favored an oral interpretation. It is interesting to note, however, that what the National Board was not willing to do for its regional boards—namely, to provide specific criteria—it seemed to insist upon for itself. In relating his oral discussion with Byrnes, Chairman Davis explained,

I tried to make it plain to Mr. Byrnes, and we all did yesterday, that we are not in favor of an indefinite, loose, interpretive change of the Order by indirection, but we want to put it down in black and white and have the Order approved by the Director.⁵²

(3) EFFECT OF THE DIRECTIVE

The Byrnes clarifying policy directive restored to the Board its initial authority, but it changed the method of determining when an inequality increase could be given. Under the legerdemain of reinterpreting the phrases "substandards of living" and to "aid in the effective prosecution of the war or to correct gross inequities," the directive reaffirmed the Board's authority to apply the Little Steel Formula and the substandards of living policy, and in addition it authorized the Board:

to establish as rapidly as possible, by occupational groups and labor market areas, the wage-rate brackets embracing all those various rates found to be

⁵⁰ Dated April 23, 1943.

⁵¹ NWLB, Industry Members, "Analysis of Proposed Directive by Stabilization Director Byrnes Enlarging the Authority of the War Labor Board Over Wage Increases (Taylor Memorandum of April 23)," dated April 26, 1943.

⁵² *Verb. Trans.*, May 7, 1943, p. 710.

sound and tested going rates. All the rates within these brackets are to be regarded as stabilized rates not subject to change save as permitted by the Little Steel Formula. Except in rare and unusual cases in which the critical needs of war production require the setting of a wage at some point above the minimum of the going wage bracket, the minimum of the going rates within the brackets will be the point beyond which the adjustments mentioned above may not be made. . . . The Board may approve wage or salary adjustments for workers in immediately interrelated job classifications to the extent required to keep the minimum differentials between immediately interrelated job classifications necessary for the maintenance of productive efficiency.⁵³

Thus the authority of the Board to correct inter-plant and intra-plant inequalities—denied by Executive Order 9328—was restored by the Byrnes directive.

After the receipt of the Byrnes directive, the National Board gradually began to relax its restrictions upon regional board activity. Wage and Hour Division offices were authorized to resume making all Form 1 rulings.⁵⁴ Authority to approve several types of cases not directly related to wages was first released.⁵⁵ Subsequent instructions to the regional boards were predominantly concerned with methods for collecting and setting the brackets that were to be used under the Byrnes directive.⁵⁶

Methods of collecting wage rate information were not materially altered after the Byrnes directive. The basic methods of collecting and setting brackets were first suggested by a meeting of the regional chairmen shortly after the directive was issued.⁵⁷ The proposals of the chairmen were unanimously adopted by the National Board.⁵⁸

The committee that acted for the regional chairmen summarized its conclusions:

The Regional Boards should dope it out the best they can under the new directive, use common sense, don't ask Washington for advice unless it is a matter of broad policy, and above all, decide the case somehow and get it out of the office.⁵⁹

After the Byrnes directive, the National Board did attempt to give more

⁵³ Director of Economic Stabilization, Supplement to Section 5 of Executive Order No. 9328, dated May 12, 1943.

⁵⁴ L. K. Garrison, Executive Director, to L. Metcalfe Walling, Wage and Hour Division Administrator, Letter, "Re: General Orders Nos. 5, 6, 9, and 31," dated May 31, 1943.

⁵⁵ *Verb. Trans.*, May 19, 1943, p. 346. The provisions in the telegram sent to the regions are discussed in *Verb. Trans.*, May 18, 1943.

⁵⁶ NWLB, "Instructions to Regional War Labor Boards for Operations under Executive Order No. 9328 and under the Supplementary Directive of May 12," dated June 1, 1943. The same memorandum is sometimes dated May 31, 1943.

⁵⁷ NWLB, *Verb. Trans.*, Meeting of Regional Chairmen, May 15, 1943, and May 16, 1943. *Verb. Trans.*, May 17, 1943, p. 6.

⁵⁸ *Verb. Trans.*, May 17, 1943, p. 38.

⁵⁹ *Ibid.*, p. 17.

guidance to the regions.⁶⁰ In late June a committee of National Board and regional board members was appointed to "energize the rate-gathering program."⁶¹ However, the National Board made no attempt completely to standardize the process. As a result each region adopted methods to suit its own particular problems.

SUBSTANDARDS

Until the shortened procedure of March 11, 1943, the regional boards had been given no general principles of guidance on how to apply the substandard criterion.⁶² From its inception, the National War Labor Board had been deciding dispute cases on the basis of substandards. From these case decisions, it was impossible to find guides. When the Board assumed the duties of voluntary wage stabilization and delegated this authority to the field, its policy statement indicated only that the regional boards might recommend the approval of wage rates on the basis of substandards. But what level of rates constituted substandards remained a secret kept close by the National Board. Perhaps some inference might have been drawn from an early order that withdrew from NWLB jurisdiction wage raises that conformed to the Fair Labor Standards Act and to similar state minimum wage laws.⁶³ Until mid-February of 1943 the regional boards had no guideposts on which to hang substandard increases. An analyst in one of the southern regional offices found it necessary, for example, to write a moving five page memorandum to substantiate an increase from 12 cents per hour to 16 cents per hour.

In mid-February, regional caseloads were lightened, as regional boards were advised of a minimum rate that could be considered substandard. For at this time increases in wage rates up to 40 cents per hour became permissible without application to the Board—provided that they did not serve as a basis for an increase in price ceilings.⁶⁴ But the regional boards did not know how far above the 40 cent minimum they might approve wage rates on the basis of substandards.

The shortened procedure provided a partial standard. It allowed the regional boards to approve rates as high as 50 cents an hour and \$20 per week. At this time, the National Board also asked the regions to determine what constituted a substandard rate for their areas and to submit that rate to the National Board for approval.

In determining a substandard rate, the regional boards were left to their own resources. In answering the question, "Should one rate be fixed for the entire region?" Chairman Davis replied,

⁶⁰ Lloyd K. Garrison to All Regional Chairmen, Memorandum, Subject: "Wage Bracket Instructions and An Alternative Approach to Some Wage Bracket Problems," dated June 1, 1943.

⁶¹ NWLB, "Newsletter," June 26, 1943, p. 9.

⁶² Chapter XIX of *Term. Report* explains the evolution of NWLB policy on substandards.

⁶³ 29 CFR, Cum. Supp., 803.7.

⁶⁴ 29 CFR, Cum. Supp., 803.30.

I take that to have been a purely discretionary matter, and whether it should be set for a whole region or separately at different labor market areas is a matter left to their discretion, I take it.⁶⁵

But what procedure should be used for defining substandards? The Chairman thought that

In our arriving at a rate in any community which we can use as a substandard of living rate we are going to have to do it quite pragmatically, and I think the best way to do it is to start the Regional Boards to work on it with a perfectly free hand to devise any method of arriving at it they want. The question is, "What is a substandard of living wage in existing circumstances in your Region?"⁶⁶

The Chairman's view prevailed.

This lack of guidance from Washington resulted in regional boards using diverse methods to determine what constituted a substandard rate.⁶⁷ By mid-August of 1943, five regional boards were applying the substandard rates that they had adopted to all geographical areas within their jurisdiction. Three boards determined what was a substandard rate by using family budget studies, although this method was supplemented by other devices. The rest of the boards determined their rates by some "rule of thumb" method, such as the board and staff members' general knowledge of regional conditions. Several regions varied the rate according to the industry to which it was to be applied. Three boards preferred to handle all substandards questions on a case-by-case basis. Among the 12 regions, the recommended rates varied from 40 cents per hour to 62 cents per hour.

The National Board never acted upon the specific recommendations that it had requested. Regional boards, in practice, were applying a 50 cent or lower substandard rate under the rule of March 11, 1943. As a result the National Board permanently adopted 50 cents as the maximum substandard rate that the regions might apply.⁶⁸ Thus from March 1943, until November 1944, when General Order No. 30 was amended, employers might make increases up to 40 cents per hour without regional board approval. Increases between the rates of 40 cents and 50 cents per hour needed approval, but approval was perfunctory in all regions, with the possible and occasional exception of the two southern regions with headquarters in Atlanta and Dallas.

The decision to amend General Order No. 30 to permit increases up to 50 cents per hour without Board approval was long considered.

⁶⁵ *Verb. Trans.*, Meeting of Regional War Labor Boards East of the Mississippi, March 20, 1943, p. 43.

⁶⁶ *Verb. Trans.*, April 10, 1943, p. 871.

⁶⁷ The information as to these diverse methods and their results is taken predominantly from NWLB, "Regional War Labor Recommendations on Substandards," dated August 12, 1943. The paper was apparently prepared by the Wage Stabilization Division.

⁶⁸ NWLB, Resolution, dated November 17, 1943.

In July 1944, a division of the National Board actually voted the change. The reasons given were that regional boards were perfunctorily approving such increases, that it would allow a speedy reduction of the backlog, and that the change would alleviate part of the regional boards' budget problems.⁶⁹ The resolution was never effected. It had been passed by only a division of the Board with the industry members dissenting, and a request for further discussion delayed its promulgation.⁷⁰ The resolution did appear in the *NWLB Minutes*, which were received by the regions, and a special Field Memorandum was necessary to correct the impression that the change had occurred.⁷¹ Finally, on November 11, 1944, General Order No. 30 was amended to allow increases up to 50 cents without Board approval—provided that increases between the rates of 40 cents and 50 cents per hour would not be used as a basis for price relief.⁷²

As a result of a series of dispute cases in which the Board ordered a substandard minimum rate of 55 cents per hour, regional boards were authorized in February of 1945 to approve wages up to this rate in voluntary cases.⁷³ Following V-E Day, the Board authorized employers to increase their rates up to 55 cents an hour without NWLB approval—provided that increases between the rates of 50 cents an hour and 55 cents an hour would not be used as a basis for price relief.⁷⁴ The last change in the Board's substandard policy came after V-J Day when the proviso concerning price ceilings was removed from General Order No. 30.⁷⁵

In summary, the NWLB handled substandard wage rates by gradually extending the regional boards' authority to act from 40 cents per hour to 55 cents per hour and by gradually excluding from NWLB jurisdiction increases that fell below an increasing minimum rate. However, no alteration of NWLB policy provided further standards for action.

Executive Order 9250 gave the Board authority to approve voluntary wage rate adjustments to "correct substandards of living." The Board's use of this authority reveals the typical semantic difficulties that may confuse the beginning student of the NWLB. As the Board applied the term substandards, it had little relation to the usual meaning of the word in labor relations and little application to the words in Executive Order No. 9250. The concept of substandards is usually connected with minimum health and decency or comfort standards of living. People are the important considerations. And, with its usual connotations,

⁶⁹ *Verb. Trans.*, Div. A, July 17, 1944, pp. A-133 f.

⁷⁰ *Verb. Trans.*, Div. A, August 25, 1944, pp. 571 f.

⁷¹ NWLB, Field Memorandum No. 25, Subject: "G. O. No. 30—Proposed Revision," dated August 29, 1944.

⁷² 29 *CFR*, 1944 *Supp.*, 803.30.

⁷³ NWLB, Resolution, February 7, 1945.

⁷⁴ 29 *CFR*, 1945 *Supp.*, 803.30.

⁷⁵ *Loc. cit.*

minimum standards of living do not vary within the same community according to the industry for which a person works. A standard of living is determined by the real wage a worker receives and not by the industry that pays it to him. Insofar as the Board approved increases on the basis of substandards, the living conditions of low paid employees were improved. But increased rates were not approved in many instances, *because* the Board wanted to improve living conditions. Rather, they were approved because the Board needed some rationale to make the increases conform to established Board policy. The cart came before the horse. The Board used its substandard criterion as an administrative device to relieve inflationary pressures on workers. It allowed some wage increases for humanitarian reasons. Its use of substandards was limited only by the extent to which the economy could absorb changes in low basic rates from the 40 cent to the 55 cent level. The formal words of the Board did not coincide with its demonstrated action.

In applying substandards, regional boards not only suffered from lack of guides for determining what was substandard, but also from lack of guides for relating substandard wage increases to other bases for wage adjustments. The bases upon which regional boards might approve wage increases were never mutually exclusive, but rather they were interlaced. The subject matter of its authority brought the NWLB many problems. No one part of a wage structure could be altered without affecting every other part. For example, when a regional board approved increases up to 50 cents an hour on the substandards principle, up to what level ought it to adjust the rates of interrelated job classifications? Ought it to allow tapered increases in the interrelated job classifications, even when such increases would place the rates for those jobs above their bracket levels? The National Board was niggardly in providing guides for handling substandard increases that affected other parts of the wage structure. The guides that it did provide were seldom definitive enough so that the regional boards might act with the assurance that they were not in contravention of the National Board policy. The guides were unpardonably slow in coming. The use of the substandards principle in voluntary cases and its use in dispute cases were never satisfactorily coordinated and gave the Board many headaches.⁷⁶

INDIVIDUAL WAGE RATE ADJUSTMENTS

In addition to its having authorized the NWLB to approve increases necessary to correct maladjustments, substandards of living, and inequalities, Executive Order 9250 also authorized the Board to exempt from its jurisdiction "small total wage increases." Realizing the impos-

⁷⁶ As an example, trace the discussions in *Verb. Trans.*, December 8, 1943, pp. 400 ff.; January 17, 1944, pp. 82 ff.; January 26, 1944, pp. 569 f.; February 4, 1944, pp. 913 ff.; and February 21, 1944, pp. 54 ff.

sibility of its acting on the mass of individual increases and realizing their non-inflationary effect, the Board early authorized limited increases without its specific approval. Individual wage rate adjustments established under wage agreements or under existing (or subsequently approved) wage rate schedules were permissible.⁷⁷ Under these limitations individual adjustments might be made for the following reasons: promotions and reclassifications; merit and length of service within the established rate ranges; increased productivity, under incentive plans; and the operation of an apprentice or trainee system. In a separate order, the Board authorized substantially similar individual adjustments under a salary agreement or a salary rate schedule.⁷⁸ Another General Order authorized the hiring of individuals at rates previously established or customarily used by the plant and the creation of new job classifications at rates that were no higher than the community level.⁷⁹ Individual adjustments might be made within the terms of these orders only if the level of production costs did not appreciably increase and if they were not used as a basis of price relief.

Prior to the issuance of Executive Order 9328, individual adjustments had not been an important part of Board policy. After its issuance, individual adjustments became more significant. When the Board discovered that its regulations were being circumvented under the guise of individual wage and salary rate adjustments, it tightened the conditions under which individual adjustments might be made.⁸⁰ General Order No. 31 set forth in greater detail what constituted a "schedule" and a "plan for making individual adjustments within and between" wage and salary rate ranges.⁸¹ The General Order was issued under authority of Executive Order 9328 which permitted the Board to approve "reasonable adjustments of wages and salaries in case of promotions, reclassifications, merit increases, incentive wages or the like."⁸²

Regional board approval was still required for those individual wage and salary adjustments that were not of a type exempted by General Order 31. Regional boards might also approve new plans to allow individual increases within rate ranges, so that the individual adjustments would not need NWLB approval. General Order 31 set out certain criteria for regional board guidance, but these were not adequate. Frequent changes in General Order 31 made its regional administration more difficult.⁸³ In order to aid the public in determining whether it was

⁷⁷ 29 *CFR, Cum. Supp.*, 803.5.

⁷⁸ 29 *CFR, Cum. Supp.*, 803.6.

⁸¹ 29 *CFR, Cum. Supp.*, 803.31.

⁷⁸ 29 *CFR, Cum. Supp.*, 803.9.

⁸⁰ *Verb. Trans.*, May 17, 1943, p. 50.

⁸² The Executive Order was implemented by the Director of Economic Stabilization in his Regulations, Section 4001.11, (a) (4).

⁸³ One suggested change in the application of the Order was formulated and was sent to the regions for their criticism. It was not adopted. See Lloyd K. Garrison, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Proposed Methods of Applying the 5¢ and 10¢ Limitations of G. O. No. 31," dated November 19, 1943.

in compliance with General Order 31, several regional boards publicly issued interpretative bulletins. But since these regional interpretations varied, the National Board ordered their cessation; but it provided no adequate substitute.⁸⁴

Before July 1944, automatic progression within rate ranges had not been a major problem. However, during the second quarter of 1944, regional boards had been forced to work out a policy of automatic length-of-service increases in voluntary cases without guidance from the National Board.⁸⁵ Regional plans resulted in great national variation and were such that the National Director of Wage Stabilization deemed them "threats to wage stabilization."⁸⁶ Even after the Board decided a series of dispute cases involving automatic increases, regional boards had few standards on which to rely in voluntary cases.⁸⁷ These cases did, however, result in an alternate approvable plan under General Order No. 31.⁸⁸ Under the insistence of Public Member Lewis Gill, a former regional chairman, the Board finally adopted rather specific criteria.⁸⁹ This plan was delayed, however, because it was adopted by a division of the Board with only one public member actually sitting, but holding the proxy of another.⁹⁰

The application of General Order 31, governing individual wage and salary adjustments, was always confused. Even within the staff of the National Board there was not always agreement as to the meaning of the Order.⁹¹ To use Professor Fesler's phrase, "The regional problems simply mirror the problems of the national level." As Lewis Gill, Public Member, summarized his remarks before a meeting of the regional chairman,

I think I ought to wind up with somewhat of an apology from the National Board for not throwing any more light on this subject. Some of the Boards . . . have been struggling with this problem for about a year now

The plan was criticized by one regional board. It maintained that the National Board had "neatly crystallized the major views presented at a . . . [regional conference] and thrown all three of them right back in our laps." See NWLB, "Newsletter," December 4, 1943, p. 2.

⁸⁴ T. W. Kheel, Executive Director, to Chairman, RWLBs, Memorandum, Subject: "Public Releases Containing Interpretations or Instructions Involving General Orders," dated February 25, 1944.

⁸⁵ Edgar L. Warren, RWLB VI, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Bi-Weekly Report for the Period Ending May 15, 1944," Not dated.

⁸⁶ Carroll R. Daugherty, Director of Wage Stabilization, to Public Members, NWLB, Memorandum, Subject: "Threat to Wage Stabilization from Demands for Fast Automatic Length of Service Rate Increases," dated May 22, 1944.

⁸⁷ *Verb. Trans.*, Div. A, August 23, 1944, p. A-346.

⁸⁸ NWLB, Field Memorandum No. 44, Subject: "Automatic Progressions Within Rates Ranges—Handling of Form 10 (Voluntary) Cases," dated September 21, 1944. Also Supplement No. 1 to Field Memorandum No. 44, Subject: "Automatic Progressions within Rate Ranges—Handling of Form 10 (Voluntary) Cases," dated December 13, 1944.

⁸⁹ *Verb. Trans.*, Div. A, September 19, 1944, pp. A-68 ff.

⁹⁰ *Verb. Trans.*, Div. B, September 22, 1944, pp. B-366 ff.

⁹¹ RWLB III, Regional Chairman, "Weekly Report," dated December 1944.

and have gotten very little assistance from this Board except by way of reversals.⁹²

The policy of the National War Labor Board did not afford the regional boards flexibility to meet their varying regional conditions, nor did it assure their conformity to any clearly established national standards.

FRINGE ISSUES

In addition to having authority to approve changes in wage rates themselves, the National War Labor Board and its regions also had authority to approve changes that were on the "fringe" of wage adjustments. Fringe (or collateral) issues were those that did not involve basic wage rates, but that nonetheless resulted in direct or indirect payments by the employer to the employee. Fringe issues were of relatively minor importance in the early days of decentralization. But when the basic stabilization policy became more formalized as a result of Executive Order No. 9328, unions, and sometimes management, sought hidden increases under the guise of various fringe adjustments.⁹³ Fringe issues included provisions for payment for overtime, wage incentives, vacations, shift differentials, holidays with pay, non-production bonus payments and awards, sick leave, insurance plans, pay for time not worked, severance pay, paid meal periods, and paid rest periods.⁹⁴

Regional boards had exceedingly broad power to approve fringe adjustments. Again, specific standards for regional application were lacking. After the Byrnes clarification of Executive Order 9328, the regions were authorized to rule upon "adjustments incident to the improvement of working conditions which do not involve increasing basic wage rates and which do not exceed the prevailing practice in the industry or area."⁹⁵ The standards that were available for regional board use in voluntary cases usually were developed by the National Board in dispute cases. The expanding and gradually liberalizing policy of the National Board in dealing with fringe issues, like its policy of handling inequalities, resulted in a restrictive directive by the Director of Economic Stabilization and subsequent qualifications liberalizing its restrictive content.

(1) INCENTIVE PLANS

As a result of Executive Order 9328, the National Board altered its policy on incentive plans and ordered that all new schemes have regional board approval.⁹⁶ After the Byrnes clarifying directive, the National Board wired its regions:

⁹² *Verb. Trans.*, Conference of Regional, Commission, and Panel Chairmen, January 13, 1945, p. 139.

⁹³ Note the comments of William Leiserson, "Labor Faces a Crisis," *American Magazine*, CXXXIX (January, 1945), p. 91.

⁹⁴ This list of fringe adjustments has been taken from those included in this category by *Term. Report*, p. iii.

⁹⁵ *Verb. Trans.*, May 19, 1943, p. 346.

⁹⁶ *Verb. Trans.*, April 16, 1943, p. 713.

No specific instructions regarding incentive plans can yet be given pending further experience with varying types of cases, but the principle must be observed that the working out of such plans is a matter particularly suited to collective bargaining, and that where a collective bargaining agency exists all rules designed to preserve collective bargaining should be applied to such cases.⁹⁷

Because of these vague instructions and because of the failure of the National Board to provide conclusive guides in its case by case decisions, regional boards processed incentive cases in different ways.⁹⁸ To achieve some uniformity and to decide a number of cases that might lead to the adoption of principles, the National Board called all incentive cases to Washington.⁹⁹ After a conference of regional chairmen in July of 1944, National Board policy on incentives was crystallized by General Order No. 38.¹⁰⁰ The Order distinguished those types of incentive wage plans that might be made without Board approval and those that might not be made without Board approval.

(2) BONUS PLANS

The NWLB faced the problems of bonuses shortly after it acquired jurisdiction over wage stabilization. General Order No. 10 authorized the payment of bonuses without Board approval, if the payment of a fixed amount had become customary or if the method of computing the bonus remained unchanged.¹⁰¹ Even before the creation of the regional war labor boards, the regional directors had the power to rule finally on bonus questions.¹⁰² The National Board granted this authority in order to rush decision of the 1942 Christmas bonus cases.¹⁰³ The same policy was adopted by the Board for the following year. To reduce their caseloads, to keep the public informed, and to supplement National Board material, several regions published question and answer bonus bulletins.¹⁰⁴ Multiple preparation of these interpretive bulletins might not have been necessary, had National Board bulletins been adequate.

Before the Christmas of 1944, General Order No. 10 was liberalized.

⁹⁷ *Verb. Trans.*, May 19, 1943, p. 347.

⁹⁸ J. T. Dunlop, Division of Review and Analysis, to George Taylor, Vice-Chairman, NWLB, Memorandum, No Subject, dated September 18, 1943. This memorandum analyzes and summarizes the criteria used by regional boards in deciding incentive cases.

⁹⁹ T. W. Kheel, Executive Director, to Chairman, RWLBs, Memorandum, Subject: "Submission of Case Files on Incentive Cases to Wage Stabilization Division in Washington," dated February 5, 1944.

¹⁰⁰ 29 *CFR*, 1944 *Supp.*, 803.38.

¹⁰¹ 29 *CFR*, *Cum. Supp.*, 803.10.

¹⁰² A regional director himself suggested this delegation. NWLB, *Verb. Trans.*, Policy Committee Meeting, December 7, 1942, No pagination.

¹⁰³ *Verb. Trans.*, December 8, 1942, pp. 147 ff.

¹⁰⁴ T. W. Kheel, RWLB II, Regional Chairman, to Lloyd Garrison, Executive Director, Memorandum, Subject: "Weekly Summary—Week Ending December 4, 1943," dated December 4, 1943.

Employers were allowed to make a year-end bonus payment of \$25 to each employee without Board approval.¹⁰⁵ Regional boards probably had fewer difficulties in applying the bonus regulations than they did with any other type of wage or fringe adjustment. However, there are indications that national instructions were violated by the combined votes of labor and industry members.¹⁰⁶

(3) SICK LEAVE PLANS

Sick leave plans were relatively few. However, they serve as an example of the general problem faced in the field. Regional boards were authorized to approve "any reasonable plan." No further instructions, other than National Board case decisions were forthcoming. As a result, regional boards were without operating criteria. One regional chairman wrote, when the National Board overruled the region on a sick leave plan and did not write an opinion, "We find ourselves somewhat hazy over just what national policy on sick leave is."¹⁰⁷

(4) HOLIDAYS

With regard to pay for holidays not worked, the National Board supplied no standards other than those available in case decisions. The general basis for determination was "prevailing industry and area practice." But how widespread the practice had to be was not stated by the National Board until February of 1945.¹⁰⁸ Regional policy in granting paid holidays varied widely.¹⁰⁹ The Regional War Labor Board in Atlanta initiated the general practice of allowing paid weekly half-holidays during the summer months without Board approval. It proposed the system for the fourth region, and the National Board approved.¹¹⁰ The National Board then called its approval of the practice to the attention of the other regional boards.¹¹¹ In the following year the National Board on its own initiative again authorized the same policy, for the original authorization had been limited to the summer of 1943.¹¹² The Fourth Regional War Labor Board then notified the

¹⁰⁵ 29 *CFR, Cum. Supp.*, 803.10.

¹⁰⁶ See *Term. Report*, p. 618.

¹⁰⁷ T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Public Member, NWLB, Memorandum, Subject: "Chairman's Report for Month Ending November 1," October 26, 1944.

¹⁰⁸ *Term. Report*, p. 364.

¹⁰⁹ As an example, see the discussion in F. H. Bullen, RWLB V, Regional Chairman, to T. W. Kheel, Executive Director, NWLB, Memorandum, Subject: "Report on Regional Board Activities for the period June 10th—June 24th," dated June 24, 1944.

¹¹⁰ *Verb. Trans.*, May 31, 1943, p. 83.

¹¹¹ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Granting of Holidays during Summer Period to Mercantile and Service Establishments," dated July 3, 1943.

¹¹² T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Granting of One-Half Holidays during Summer Period to Mercantile and Service Establishments," dated July 8, 1944.

National Board that it had announced this policy some three weeks previously.¹¹³

(5) OVERTIME

In handling applications for overtime pay in industries not covered by the Fair Labor Standards Act, the regional boards had little to guide them. The National Board neither formulated general principles for delegation, nor decided many cases involving the overtime issue. Generally, the criteria used by the regional boards were the "prevailing industry or area practice." Whether industry practice was to be more important than area practice was not determined by the National Board. Thus the policy of the regions varied considerably. Some regions considered the existing practice of the company, especially when the application would extend the overtime payments to some units of a plant whose other units received such payments.¹¹⁴ More guidance in the form of principles and criteria would have provided greater uniformity and still allowed for regional differentials.

(6) SHIFT DIFFERENTIALS

In deciding cases involving shift differentials, the National Board did not develop generalized criteria for application by regional boards until it was forced to do so by order of the Economic Stabilization Director. The regions had been faced with policy problems involving night shift differentials since early in 1943. Early regional requests for establishment of policy standards were frequent and urgent.¹¹⁵ The Board escaped answering regional questions in the following manner:

I do not believe that it would be possible for the Board to answer your questions with the precision which you evidently desire. As you know, the Board is extremely hesitant about making general pronouncements on matters of policy, preferring to act on a case to case basis wherever possible. I think the best I can do is to refer you to the analysis of what the Board has done. . . .¹¹⁶

During the last year of the Board, the regions were acting unofficially upon the "premise or promises" that Public Member Dexter Keezer had given them.¹¹⁷ Major problems were the distinctions between con-

¹¹³ M. T. Van Hecke, RWLB IV, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Granting of One-Half Holidays during Summer Period to Mercantile and Service Establishments," dated July 18, 1944.

¹¹⁴ Theodore W. Kheel, Executive Director, to RWLB Chairmen, Memorandum, Subject: "Overtime Pay Policy for Workers Not Covered by the Fair Labor Standards Act," dated November 17, 1944.

¹¹⁵ See J. Hoskins, RWLB VII, Regional Chairman, to Lloyd K. Garrison, Executive Director, Letter, dated March 23, 1943.

¹¹⁶ Lloyd K. Garrison, Executive Director, to J. Hoskins, RWLB VII, Regional Chairman, Letter, dated April 7, 1943.

¹¹⁷ *Verb. Trans.*, Conference of Regional, Commission, and Panel Chairmen, dated January 13, 1945, p. 28.

tinuous and non-continuous industries¹¹⁸ and the importance that was to be attached to industry and area practice.

(7) VACATION PLANS

Regional boards also had authority to approve vacation plans. In approving them, the boards interpreted the case decisions of the National Board differently, and this difference of interpretation led to variations among the regions.¹¹⁹ The National Board refused to lay down specific standards, in spite of regional requests for guidance.¹²⁰ Generally, the board permitted vacations of one week after one year of service and of two weeks after five years of service. Occasionally the National Board would approve a more liberal plan and occasionally it would approve a more restricted plan.¹²¹ Again industry and area practice was to be considered.

Although regional boards constantly clamored for assistance and standards on fringe issues, they were neither limited nor actively guided by the National Board until limitations and guidance were made necessary by rulings of the Director of Economic Stabilization.

STANDARDS FOR FRINGE ADJUSTMENTS: (1) AN EARLY PROPOSAL

After the issuance of Executive Order No. 9328, but prior to Byrnes' clarifying directive, the National Board temporarily adopted limitations and standards under which the regional boards could evaluate non-rotating shift differentials and vacation plans.¹²² Under this plan, 5 cent shift differentials in hourly rates were allowable if they constituted the "prevailing practice in the industry" and if such increases would not be used as a basis for price relief. If the Board had interpreted the restrictions of Executive Order 9328 literally, it could not have approved fringe adjustments. Therefore, it rationalized that shift differentials were not "wage increases," and that they were allowable because they would permit "equal pay for equal work" and because the differentials existed only because of "added job content." Also by this plan regional boards were authorized to approve vacation plans "up to two weeks for a five year employee," provided no price relief were involved. Under Executive Order 9328, the NWLB justification was that vacations did the employee good and improved the productive out-

¹¹⁸ "Continuous industries are those in which the processes involved require continuous operation of the plant; non-continuous industries are those in which the processes do not require continuous operation of the plant although, as a result of increased production, they may be operating around-the-clock." *Term. Report*, p. 351, Footnote 1.

¹¹⁹ *Verb. Trans.*, April 28, 1943, p. 471.

¹²⁰ See, for example, RWLB II, *Minutes*, July 7, 1943.

¹²¹ See cases No. 111-2419-HO and No. 111-2710-D, dated April 6, 1944, and January 2, 1945, respectively. Quoted in *Term. Report*, pp. 339 ff. See also Frank McCallister, RWLB IV, Executive Assistant to CIO Members, "WLB Headlines," dated March 22, 1945.

¹²² *Verb. Trans.*, April 28, 1943, pp. 471 ff, contains the discussion and adoption of these provisions.

put of the plant; thus they were approvable under the "incentive" provisions of the Executive Order. Vacations were also characterized as not bearing "any relation to wages at all," as part of "working conditions," and as "health and recreation provisions—renewal of a man's working power."

Two days after the Board had adopted these standards for regional use, the Executive Director brought before it for approval a proposed telegram embodying them. In a discussion concerning this telegram, the Board completely reversed its position. It decided not to send the telegram and not to use the standards it had recently adopted.¹²³ It decided to delay any discussion of shift differentials and to wire the regions only that "under 9328 the regional boards have authority to approve reasonable vacation plans." This change in Board policy was effected principally by the employer members of the Board who wanted to use shift differentials and vacations as "something to give" in the collective bargaining process.

(2) THE REGIONS' FIGHT FOR STANDARDS

After Byrnes clarified Executive Order 9328, the regional board chairmen were called to a conference in Washington. A sub-committee under the chairmanship of Theodore W. Kheel, then Chairman of Regional Board II in New York, requested the National Board to confirm the regional boards' authority to deal with various types of fringe issues and to provide standards under which they might act.¹²⁴ The regions were mainly interested in criteria that they might apply in voluntary cases, but the National Board refused clarification in part upon the grounds that some fringe issues:

would be in dispute cases where the setting of a general rule might be prejudging those cases, that is, preventing elbow room for moving on them. For instance, payment of meals and transportation. That would cover a whole lot and it could cover a little. The same with absentee bonus.¹²⁵

The fact that fringe issues in voluntary cases exceeded fringe issues in dispute cases by about twenty to one did not influence the Board's thinking.¹²⁶ Some Board members wanted to readopt the standards that had previously been agreed to and then withheld, but they were outvoted.¹²⁷ The National Board's reluctance to adopt standards also stemmed from a belief that their adoption would hamper the discretion of the regional boards.¹²⁸

The National Board consistently failed to realize that a grant of discretion to its regional boards without standards of guidance was, in

¹²³ *Verb. Trans.*, April 30, 1943, pp. 734 ff.

¹²⁴ George Taylor, Vice-Chairman, *Verb. Trans.*, May 17, 1943, p. 21.

¹²⁵ *Loc. cit.*

¹²⁶ *Verb. Trans.*, May 19, 1943, p. 167.

¹²⁷ *Verb. Trans.*, May 18, 1943, p. 138.

¹²⁸ *Ibid.*, pp. 160 f.

operating reality, a restriction upon regional activity. A blanket grant of discretionary authority to a subordinate administrative agency within the same organizational hierarchy does not yield a freedom of alternatives, so long as the subordinate agency faces review by its superior. For under these circumstances, the subordinate agency must conform to national standards. When these standards are fairly definite, the subordinate agency can conform. However, when they are indefinite, the subordinate's conformance is limited by its ability to anticipate its superior. If the criteria of judgment are the speed and effectiveness of carrying out a given policy, a blanket grant of discretionary authority to a subordinate administrative agency can be as restrictive as an excessively narrow and detailed grant of authority. The National War Labor Board never successfully achieved a middle ground between the two positions.

It has been pointed out above that the lack of effective standards resulted in great variations not only in the substantive results that regional board policies achieved, but also in the policies that they applied.¹²⁹ Regional boards generally succeeded in formulating their own standards for approval of fringe issues in voluntary cases, so that they could delegate that authority to the directors of wage stabilization.¹³⁰ Since Executive Order 9328 had restricted NWLB activity in granting direct wage increases, the regional boards began receiving more applications for fringe benefits. By the mid-months of 1944, fringe issues had achieved a more important position in Board policy.

A conference of regional chairmen recommended:

that each Regional Board and Commission be authorized to issue general regulations which would permit adjustments to be made in vacation allowances, night shift premiums and paid holidays, as well as other "fringe" matters, without Board approval.

The regulations issued by the Regional Boards should be approved by the National Board prior to their release.¹³¹

This suggestion was rejected by the National Board.¹³² Its proponents defended the plan with two arguments. First, adoption would not materially alter the results of present regional practice. The regional boards would only be required to clear their present policies with Washington prior to their continued use. Second, the regional caseloads would be relieved, because the regional boards would shift the burden to the employers. The opponents of the plan objected to the regions' setting standards and wanted a continuance of what they thought Board

¹²⁹ For example, see *Verb. Trans.*, Div. A, July 17, 1944, p. A-154.

¹³⁰ *Ibid.*, pp. 155 ff.

¹³¹ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, pp. 4 ff.

¹³² See the discussion in *ibid.*, pp. 1 ff, and in *Verb. Trans.*, Div. A, July 17, 1944, pp. A-155 ff.

policy was. They wanted to continue "national standards with the Regions having the authority to adapt them to the particular or peculiar needs of the Region but not below a standard."¹³³

A paradox thus faced the National Board: When the regional boards wanted more adequate standards and less discretion, the National Board would refuse. When the regions wanted more discretion to adopt regional standards to be approved by the National Board for their use, the National Board would again refuse. The Board's Chairman neatly summarized the perplexity:

... The committee said, "Well, let the Regional Boards issue these General Orders." And then the difficulty is the different procedures in different Regions which in one sense are just—I mean, the objection to the General Order of the Board [National] is that it will not fit all Regions properly, and then when you come along with the suggestion that each Region do it for itself, the answer is then they will not all be alike, and you are not going to be able to reconcile that dispute in a thousand years.¹³⁴

Inability satisfactorily to solve the general principles of, as well as the specific requests for, delegation led to inaction by the National Board.

NWLB AUTHORITY OVER FRINGE ADJUSTMENTS

Not until the general power of the NWLB to act on fringe issues was reinterpreted by the Director of Economic Stabilization were the regional boards given quantitative limitations and more relatively adequate standards under which to operate.

Literally interpreted, Executive Order 9328 had prohibited increases based upon intra-plant inequalities or inequities and increases of fringe benefits, *under any conditions*. For they were not specifically included in the Order.

Nor shall anything herein be construed to prevent such agencies, subject to the general policies and directives of the Economic Stabilization Director, from authorizing reasonable adjustments of wages and salaries in case of promotions, reclassifications, merit increases, incentive wages *or the like*, provided that such adjustments do not increase the level of production costs appreciably or furnish the basis either to increase prices or to resist otherwise justifiable reductions in price.¹³⁵

The Director of Economic Stabilization agreed, however, that the Board might make intra-plant adjustments involving job reevaluations through interpretation of the word "reclassifications" and might make fringe adjustments through interpretation of the phrase "or the like." Seemingly the Order prevented the making of any of the adjustments that were

¹³³ Robert J. Watt, AFL Member, NWLB, *Verb. Trans.*, Div. A, July 17, 1944, p. 15.

¹³⁴ *Ibid.*, p. 21.

¹³⁵ 3 *CFR*, *Cum. Supp.*, 9328. *Italics mine.*

specifically named in the quoted paragraph, *if* they were to result in an increase in production costs or in applications for price relief.

The Byrnes supplement to the Order read,

All wage adjustments made by the Board which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings, or if no price ceilings are involved which may increase the production costs above the level prevailing in comparable plants or establishments, shall become effective only if approved by the Economic Stabilization Director.¹³⁶

The Board interpreted the two orders collectively to mean that adjustments based on intra-plant inequities and on fringe issues were approvable *even if* they involved a rise in production costs or might be a basis for price relief, *provided* that, under the terms of the Byrnes clarification, they were submitted to the Director of Economic Stabilization for approval.

THE VINSON DIRECTIVE

Because until late in 1944 approval of fringe and intra-plant adjustments had not, in practice, been appreciably affecting production costs or necessitating price relief, the Board's interpretation of the Order and the Directive had not been questioned.¹³⁷ As a result of the NWLB decision in the basic steel case, which involved both intra-plant inequities and shift differentials, the Director of Economic Stabilization, at this time Fred M. Vinson, brought forth a literal interpretation of the Executive Order. He explained that if intra-plant and fringe adjustments necessitated either price relief or a rise in production levels, they were not approvable under any conditions. Vinson thus invoked the absolute ban of Executive Order 9328.¹³⁸ The issue between the Director and the Board was thus raised.

The Board wanted to continue its previous interpretation of the rules under which it was operating.¹³⁹ The Director was unwilling to permit intra-plant and fringe adjustments necessitating rises in production costs or requests for price relief to be approved *at all*, unless he could set limits to the type and extent of adjustments that were to be

¹³⁶ Director of Economic Stabilization, Supplement to Section 5 of Executive Order No. 9328, dated May 12, 1943.

¹³⁷ See a discussion of this development tersely explained in *Term. Report*, p. 192.

¹³⁸ Fred M. Vinson, Director of Economic Stabilization, to William H. Davis, Chairman, NWLB, Letter, dated December 12, 1944.

¹³⁹ The NWLB position was summarized in a Resolution of February 8, 1945, and in William H. Davis, Chairman, NWLB, to Fred M. Vinson, Director of Economic Stabilization, Letter, dated February 27, 1945. "As you know, it is the unanimous wish of the Board that you exclude from the present price and production cost clause of Section 2 of Executive Order 9328 wage adjustments made for the elimination of intra-plant inequities through a job reclassification program and so-called fringe adjustments and include such adjustments under the provisions of Section 2 of the May 12, 1943 directive."

made. The NWLB argued at first that it was impossible to generalize, to standardize, or to quantify and that it would have to continue meeting the issues as they arose. To this argument the Director wrote in reply,

I am unable . . . to be content with the mere hope that standards developed on a case by case basis will afford adequate protection to the National stabilization policy. Case by case development in practice implies an expanding or dynamic conception of wage policy, which is but another name for constantly increasing wage increases.¹⁴⁰

The Director asked the Board for the standards it had been using and what its practice for various types of fringe adjustments had been.

In a discussion of the Director's request, the Board agreed—with difficulty—that it was possible to set quantitative limitations on adjustments involving vacations, job evaluation schemes, and shift differentials.¹⁴¹ With reference to quantifying other types of fringe adjustments, it was the Board's opinion that such action would be "ill-advised," "literally and truly impossible," and "impossible to describe in monetary terms . . . or [in] other measures the Board's practices."¹⁴²

The Board indicated to the Director that the results of its job reclassification approvals had not "increased job rates by more than \$.02 per hour on the average."¹⁴³ In non-continuous industries, in which additional shifts were not necessary for production, the Board had authorized 5 cent and 10 cent second and third shift differentials, except where an established industry or area practice clearly dictated some other disposition. In continuous industries, the Board usually allowed no differential for the various shifts, except where differentials conformed to the prevailing practice in the industry or area; then the Board was authorizing 4 cents and 6 cents for second and third shifts. The Board concluded that its practice in granting vacations was to allow one week with pay after one year of service and two weeks with pay after five years of service. For travel time, furnishing of tools, sick leave, dismissal plans, paid holidays, call-in pay, rest periods, and other types of fringe adjustments "the Board's practice has been to approve agreements on voluntary submission embodying 'fringe' adjustments if found to be bona fide and not a subterfuge for wage increases."

When the Director received this statement he asked the NWLB to establish "fixed, definitely fixed limits" for *all* types of fringe issues.¹⁴⁴

¹⁴⁰ Fred M. Vinson, Director of Economic Stabilization, to William H. Davis, Chairman, NWLB, Letter, dated February 15, 1945. Also quoted in *Verb. Trans.*, Division A, February 16, 1945, pp. 4 f.

¹⁴¹ *Verb. Trans.*, Division A, February 16, 1945, p. 51; and *ibid.*, February 17, 1945, pp. 3 and 17 f. The same position is expressed in a Board Resolution dated February 19, 1945.

¹⁴² *Verb. Trans.*, Division A, February 16, 1945, p. 51. One wonders, if it were "impossible to describe in monetary terms . . . or other measures the Board's practices," how the regional boards were to be guided.

¹⁴³ NWLB, "Statement of Board's Past Practices," dated February 16, 1945.

¹⁴⁴ *Verb. Trans.*, Division A, February 19, 1945, p. 19.

But these the Board would not provide. As a result, the Director refused to authorize the Board to approve *all* types of fringe adjustments, including those necessitating increases in production costs or serving as a basis for price relief, even if these were subject to his review and final determination.¹⁴⁵ Limited adjustments that increased production costs or provided a basis for price relief were allowable under Vinson's directive. These included:

- (a) Vacation provisions up to one week after one year of service and two weeks after five years of service;
- (b) Shift differentials in non-continuous operations not to exceed 4¢ per hour for the second shift, and 8¢ per hour for the third shift;
- (c) Merit increases and automatic progressions on a basis no more liberal than that embodied in the Board's present standards;
- (d) Re-classifications and job re-evaluations not to exceed an average increase for all employees in the plant or plants covered by the order or authorization of 1¢ per hour or 1%. The Board shall continue to use its present safeguards to prevent such adjustments from becoming general wage increases. In *rare and unusual* cases affecting the critical needs of war production the Board may authorize or direct re-classifications or re-evaluations in excess of these amounts, but such adjustments shall become effective only if approved by the Director of Economic Stabilization.¹⁴⁶

Thus only with regard to vacations and individual wage rate adjustments within established ranges did the directive permit the Board to continue its past policy, when price increases or production costs were involved. The directive made no provision for shift differentials in continuous industries, even though the Board had quantified its past practices in this respect. In non-continuous industries, it reduced allowable shift differentials under Board policy by 1 cent and 2 cents for the second and third shifts respectively. And it reduced Board activity in reclassification schemes to those that amounted to no more than a 1 cent per hour average increase. It should be emphasized that these limitations on Board policy were imposed only for those cases the approval of which would affect production costs or price levels.

THE DAVIS VALVE

Shortly after the March 8, 1945, directive, Fred M. Vinson resigned his position as Director of Economic Stabilization. Succeeding him in office was William H. Davis, theretofore Chairman of the NWLB.¹⁴⁷ As Director of Economic Stabilization Byrnes had interpreted much of Executive Order No. 9328 out of existence under NWLB pressure, so Director of Economic Stabilization Davis interpreted much of ex-Director Vinson's directive out of existence. By a letter and an amend-

¹⁴⁵ Director of Economic Stabilization, "Directive to the National War Labor Board on Wage Adjustments Not Directly Involving Basic Wage Rates," dated March 8, 1945.

¹⁴⁶ *Ibid.*, I have supplied the italics.

¹⁴⁷ At this time George W. Taylor assumed the Chairmanship of the National War Labor Board.

ment to the Vinson directive, Davis succeeded in restoring to the Board much of the authority it had been assuming prior to Vinson's objection to the basic steel case.

Upon the request of NWLB Chairman Taylor, Director Davis authorized the interpretation of the words "rare and unusual" in the Vinson directive to include exceptional cases of intra-plant inequities. However, such cases had to be submitted for approval to the Director, if they involved price relief or increased production costs.¹⁴⁸ The 1 cent or 1 percent limitation was, in effect, surmounted.

The formal Davis amendment to the Vinson directive¹⁴⁹ added four paragraphs to the original. Whereas the original directive had not mentioned shift differentials in continuous industries, the Davis amendment included them—but only up to the stabilized limit of previous Board policy of 4 cents for the second shift and 6 cents for the third shift. Vacation provisions and shift differentials were approvable by the Board beyond the limits of the quantified terms of the directive if the Board found three conditions: First, they must be established "in the appropriate area or industry by a clear and well-defined practice." Second, they must not be unstabilizing to the area or industry. And, third, they must "be fair and equitable to employer and employee." Other types of fringe adjustments were approvable if they were found to be the "substantial practice in the industry or the area" and not unstabilizing, or if "they are equitably required to meet a special or unique situation or problem within a company or industry and consequently are not of a precedent making character."

As a result of the Vinson and the Davis directives, additional instructions were given to the regional boards for making fringe adjustments.¹⁵⁰ It is doubtful whether these instructions were adequate even at this late date.¹⁵¹

REGIONAL REGULATIONS

The extent to which regional boards might make rules of general application within their jurisdiction varied during the history of the NWLB. In October of 1943, they were authorized to issue such rules. However, they were admonished not to designate these rules as "general orders," so that they would not be confused with the General Orders of the NWLB.¹⁵² In pursuance of these instructions, regional boards

¹⁴⁸ George W. Taylor, Chairman, NWLB, to William H. Davis, Director of Economic Stabilization, Letter, dated April 11, 1945; and William H. Davis, Director of Economic Stabilization, to George W. Taylor, Chairman, NWLB, Letter, dated April 14, 1945.

¹⁴⁹ Director of Economic Stabilization, Supplement to Directive of March 8, 1945, dated April 24, 1945.

¹⁵⁰ *Verb. Trans.*, Division A, May 11, 1945, pp. 94-129.

¹⁵¹ For example, see W. H. Madden, RWLB VIII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Monthly Report," dated June 6, 1945.

¹⁵² Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Authority of Regional Boards to Issue General Orders," dated October 7, 1943.

began to relieve themselves of their backlogs. They authorized certain types of activity without prior board approval. For example, Regional Board II in New York granted blanket authority to the employers under its jurisdiction to furnish to their workers free refreshments during working hours, if they cost the company no more than ten cents each day for each employee.¹⁵³

In the middle of 1944, the NWLB changed its policy and prohibited the issuance of regional general regulations without the "express authority" of the National Board.¹⁵⁴ The necessity of approving all types of regional board action that were submitted to it proved a burden on the National Board. It then tried to spell out in a Field Memorandum what action regional boards might take on their own initiative and what action they might not take. This memorandum read:

We have, as you know, given Board Agencies considerable authority within the framework of the general policies which the NWLB has adopted . . . [such as deciding fringe issues on the broad basis of area and industry practice.] That is the broad policy statement.

There are, however, certain matters which the Board Agencies should not pass upon without securing prior clearance from the National Board. Thus in a resolution passed unanimously on June 22, 1944, the National Board stated that Regional Boards and Commissions shall not issue any General Orders or regulations without the express authority of the War Labor Board. This resolution has reference primarily to regulations similar to General Orders of the National Board, but Regional or industrial in scope—that is, a policy permitting an employer to make without prior approval of the Board a type of wage adjustment other than those provided for in General Orders of the National Board.

It would be difficult to specify in advance the precise dividing line on matters on which the Regional Boards should . . . [approve on their own] and those which should be submitted to the National Board for prior approval. The Board Agencies will have to exercise their discretion in this respect. . . .

We desire to encourage the Board Agencies to step up to their responsibilities and make decisions on the issues before them, but we must also recognize the closely integrated nature of our program and the effect that major decisions in one Region have on other Regions. The exercise of sound judgment and common sense will, we believe, enable us to proceed without undue red tape on the one hand or embarrassment to our overall program on the other.¹⁵⁵

Regional boards thus were in a position of responsibility without authority. Their substantive jurisdiction was not clearly defined. Uncertainty of jurisdiction does not lead to clear-cut and decisive action.

¹⁵³ RWLB II, *Minutes*, June 19, 1944.

¹⁵⁴ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum. Subject: "General Regulations of Regional Boards and Commissions," dated June 30, 1944.

¹⁵⁵ NWLB, Field Memorandum No. 95, Subject: "Regulations of Regional Boards and Commissions—prior Clearance by National Board," dated February 23, 1945.

REGIONAL DISCRETION AND NATIONAL STANDARDS

The National War Labor Board did not enjoy having its regional boards walk a chalk line with the possibility of their stepping into the gaping chasm of broad authority with no guidance on one side or onto the jagged rocks of minute instructions on the other. The NWLB did not exist in a vacuum. It thrived in a social atmosphere. If the Board were to survive at all, it had to play politics, in a broad sense. As long as its policy remained fluid, the Board was in a position to "bargain" with the parties whose support was necessary to its existence. A fluid policy allowed the Board slowly to yield to employee-employer pressures. Willingness so to yield probably prevented widespread violation of stabilization principles. Whereas a rigid policy might have popped the inflationary bubble. Especially was an unstandardized policy valuable in handling fringe adjustments. Dexter Keezer, Public Member, holds the view that:

It would have been reckless for the Board to chop off these lines of development abruptly and thus complicate even further its double-barrelled task of preventing wartime labor disputes and stabilizing wages.¹⁵⁶

Approval of fringe issues relieved the pressure for direct wage increases, which would have been more inflationary. And, in addition, their approval allowed the National War Labor Board to perform its indirect and self-appointed purpose of being a social service agency.¹⁵⁷ Unquestionably the well-being of thousands of workers in low income groups was improved, especially in the South.

The motivations of the National Board did not, however, serve as adequate guides for the activities of the regional boards. Vice-Chairman Taylor summarized the National Board's attitude toward the position of the regional boards in the NWLB hierarchy:

There has been a great deal of discretion given to the Regional Boards and a lot of folks think, and with some justification perhaps, that we don't give enough guidance to the Regional Boards. But after all, we give you responsibilities, and we expect you to carry them out.¹⁵⁸

But the regional boards were not insulated from forces other than those at the upper end of the scalar chain. The regional boards did have "responsibilities," and they realized them. Their "customers" realized them too and pressured the regional boards into action. Without standards of guidance, the regional boards made decisions. These decisions, when appealed, were then overruled or upheld by the National Board. When upheld, the regional boards were in effect *making* policy, not following it. When their decisions were upheld, the regional boards

¹⁵⁶ Dexter Keezer, "Observations on the Operations of the National War Labor Board, *American Economic Review*, XXXVI (June, 1946), p. 256.

¹⁵⁷ See, for example, RWLB I, "Summary, General Meeting—Panel Members," February 18 and 19, 1944, p. 55.

¹⁵⁸ *Verb. Trans.*, Division A, August 3, 1944, pp. A-464 f.

had succeeded in braving the dangers of the chalk line, though they knew not where the next step might lead.

Initial inaction at the top levels of administration forces decisions at the lower levels. From the mass of individual decisions, general policies are normally formulated. But the nature of the National War Labor Board's substantive duties prevented it from following the customary pattern.

ENFORCEMENT

To carry out its wage stabilization policies, the National War Labor Board used two fundamental techniques. First, it sought to prevent violations by acquainting the public with its regulations. The National Board made no attempt to "control" or restrict this method, for regional variation could do no harm. Regional information directors, however, did get advice from the national office.

The second method by which the NWLB attempted to implement its stabilization policies was by taking action against employers who were found to have been violating the Board's policies. The boards first determined the amount of wages that had been paid in violation of the stabilization program. They then determined the amount of illegally paid wages for which the board wished to hold the employer accountable. This amount was then not deductible as an expense by the employer in computing his income taxes, nor was it to be charged as an expense under governmental contracts.

National Board guidance of regional boards in the enforcement function was almost exclusively procedural.¹⁵⁹ Regional boards were given power to act in broad and general terms:

Cases arising in any War Labor Board region involving alleged contravention of the Stabilization Act of 1942 . . . shall be dealt with by an Enforcement Division designated by each Regional War Labor Board. . . .

. . . An Enforcement Division shall have authority . . . to recommend whether, in the light of all circumstances in the case, any portion or all of the sanctions prescribed by the act shall be withheld. . . .

Each Enforcement Division . . . shall be subject to general policy directives of the Regional War Labor Board. . . .

If the Enforcement Division finds that the allegation of contravention of the act has been established by a preponderance of the evidence, it shall . . . recommend whether there shall be withheld by the Executive Depart-

¹⁵⁹ See NWLB, "Procedure Relative to Possible Violation of the Wage and Salary Stabilization Program," dated July 30, 1943; "Report of Survey Enforcement Committee," dated May 1, 1944; Jesse Freidin, General Counsel, to Lloyd K. Garrison, Public Member, Memorandum, Subject: "Enforcement," dated May 29, 1944; Jesse Freidin, General Counsel, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Enforcement Regulations," dated September 6, 1944; and NWLB, "Revised Procedure Relative to Possible Violation of the Wage and Salary Stabilization Program," dated September 18, 1944.

ments and other governmental agencies all or any portion of the sanctions prescribed by the Act.¹⁶⁰

The prime substantive objective in handling enforcement cases was to achieve regional uniformity.¹⁶¹ According to a report by an investigating committee in 1944, consistent results were being reasonably achieved.¹⁶²

General standards for deciding when a violation existed and what criteria should be used in determining the amount of penalty to be invoked were subject to the approval of the regional boards.¹⁶³ The General Counsel for the NWLB indicated that there was "no mechanical formula by which the amount of penalty can be determined in advance in any case."¹⁶⁴ The amount of the penalty was variable according to whether the violation was approvable under Board policy, whether it was voluntarily disclosed, and whether the motivation behind the violation was reasonable. Since the National Board heard only 114 enforcement cases out of 6,900 penalty cases decided by regional boards, the National Board could not have provided greatly effective guidance even in its case decisions.¹⁶⁵

¹⁶⁰ 29 *CFR*, 1944 *Supp.*, 802.70, 802.71, 802.73.

¹⁶¹ Jesse Freidin, General Counsel, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Enforcement Instructions," dated September 6, 1944.

¹⁶² "Report of Survey Enforcement Committee," dated May 1, 1944, p. 4.

¹⁶³ For example, see RWLB XII, *Minutes*, September 13, 1944.

¹⁶⁴ Quoted in *Term. Report*, p. 430.

¹⁶⁵ *Ibid.*, pp. 431 and 439.

CHAPTER IX

WAGE STABILIZATION: REGIONAL PROCEDURES, PROCESSES, AND PROBLEMS

Some fugitive from the IBM invented a new statistical form which slowed all our activities to an infantile crawl. During the first week after this form was introduced our production reached the all-time low of 104 cases. If the gremlins who invented the new statistical summary sheet, Form 301, ever visit Region III, they had better carry a gun. Meanwhile we expect to break the bottleneck soon and get back in stride—largely by an expansion of the clerical staff at the expense of the other work.

—Sylvester Garrett, RWLB III, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report of RB III Activities for Period from April 1 through April 14, 1944," dated April 14, 1944.

The public relations aspect is quite a point actually. A big company, a big case, or a union, they want to feel that the top men are giving their case consideration in spite of the fact that they will get a lousier decision [from the regional board, as opposed to the regional wage stabilization director.]

—Saul Wallen, RWLB I, Regional Chairman, Verb. Trans., Full Board Meeting, March 21, 1944.

Authority to make decisions does not, *ipso facto*, result in decisions. Delegation to the field of clear-cut policy, accompanied by adequate standards for applying it, does not in itself produce action. Regional inactivity and regional mal-administration can bog down any agency program. Effective policy effectively administered yields good administration.

Decision-making involves more than a final signature on an administrative order. Facts must be culled. Issues must be analyzed. Various alternatives must be presented, supported, and evaluated. Then facts, issues, and alternatives must be summarized. Indeed, the processes that lead to decision-making are the stuff of administration. Decisions begin at the lower levels of the hierarchy and are filtered up to the top levels. One-man decisions are rare.

In carrying out regional wage stabilization policy, decisions were made in the name of the regional board or the regional wage stabilization director. Behind both was the work of the wage stabilization division. Upon the effectiveness of this division, the regional board and the regional wage stabilization director relied.

REGIONAL WAGE STABILIZATION DIVISION ORGANIZATION

A basic problem of the regional wage stabilization division was whether its internal subdivision should be based on area or on industrial groupings. The first four months of regional experience brought little or no formal division of work among the wage rate analysts or among the sections in which they were gradually organized. Informally, a

genuine degree of specialization grew within the division. If one analyst had had experience with an industry (such as textiles) with specialized job titles and classifications, in all likelihood he would find himself analyzing all cases involving that industry. Other cases within the same industry and involving the same problems and classifications would be transferred to him by the other analysts. In the earlier days of wage stabilization, when the regional staffs were small, a relatively successful informal arrangement of work was accomplished. The formal divisional organization that followed grew from the earlier informal experience.

Since the various regional boards were responsible for areas greatly different in size and in types and extent of industry, and since they were responsible for organization of their wage stabilization divisions, arrangement of work within the divisions did not follow a set pattern. The regional director of wage stabilization was usually allowed a free hand with the internal organization of his division. Specialization in most regions was predominantly on an areal basis—in the early days on the basis of states or metropolitan areas and, after the first six months, on the basis of labor market areas. Large and heavy industries that recruited skilled workers outside their own labor market areas were a secondary basis of specialization.¹

Some regions experimented with a branch based on the process used in making the wage analysis. When many Forms 10 were based upon maladjustments, a number of analysts in the lower civil service grades might be combined in a unit to analyze them. Since use of the Little Steel Formula involved only simple mathematics and little, if any, knowledge of labor economics or job classifications, such a unit was effective. When companies had exhausted their allowable increases under the Formula and under the inequalities' wage brackets, the number of cases involving job reclassifications, reevaluations, and incentive plans increased. Since analysis of these issues required more specialized skill, training, and knowledge, the better qualified analysts were better used on them. This type of organization cut across both areal and industrial lines.²

Some wage stabilization divisions were organized basically or in part upon the board agent who would make the decision. The division might include branches that analyzed only those cases decided initially by the wage stabilization director, those in which the shortened procedure might be used, those that would be decided initially by the regional

¹ Regions I and IV are excellent examples of this dual specialization. See RWLB I, Functional Organization Chart, dated July 9, 1943, and RWLB IV, "Factors Which Contribute to the Difficulty and Responsibility of Wage Analysis Work in the Fourth War Labor Board Region (Atlanta)," not dated.

² Examples of this type of organization may be noted in RWLB II, Regional Chairman, "Weekly Report," dated June 10, 1944; RWLB IV, Organization Chart, dated July 1945; and RWLB V, Regional Chairman, "Weekly Report," dated March 22, 1943.

board itself, or those on which requests for reconsideration or appeal had been filed. This type of organization also cut across industrial and areal lines and generally proved ineffective. However, insofar as regional boards themselves acted upon cases involving specialized processes (such as job evaluation and incentive schemes) it was effective. The use of a separate branch to handle all cases on appeals and reconsiderations gave the applicant the advantage of having a different person analyze his case. However, it had the disadvantage of failing to utilize the acquired knowledge of the wage rate analyst who initially studied the Form 10.³

In addition to the branches that analyzed Forms 10, other branches within the division serviced the operating units. Some regions had a disputes analysis branch that analyzed only the wage issues in dispute cases. Some regions had branches to compile wage statistics according to labor market areas so that the regional boards could set brackets. Once the brackets were set, they were applied by the case analysis branches. Similar duties were occasionally given to a research branch that also undertook general studies to determine labor market areas and specific studies necessary to decide specific cases. The bracket and research branches worked closely with the industry and labor assistants in the collection of statistical materials.⁴

Some regional boards used liaison officers to organize and maintain relations between them and other governmental agencies with which the board cooperated or from which the board required occasional assistance.⁵

Oral communication with persons having voluntary cases before the board usually came within the scope of the wage stabilization division, although in a few regions the industry and labor assistants would talk with applicants who came to inquire about the status of their cases. In one region the director of information interviewed applicants who visited the offices of the board. Some wage stabilization divisions had a separate branch to handle personal interviews. Often this branch also assigned cases to analysts in accordance with their specialization. In these instances, the branch would also be responsible for the preliminary review of the applications to determine whether all information necessary to process the case was available in the case folder.

The internal arrangement of the wage stabilization division serves as adequate example that concepts of governmental organization for the

³ An example of this type of organization is given in RWLB VIII, Regional Chairman, "Weekly Report," dated March 27, 1943.

⁴ For examples of the use of bracket and research branches, see RWLB I, Organization Chart, dated July 1944; RWLB III, Organization Chart, dated July 1943; RWLB IV, Functional Chart, dated July 19, 1943; RWLB XII, Regional Chairman, "Annual Report," dated March 27, 1944; and for the seventh region NWLB, "Newsletter," dated February 11, 1943, p. 5.

⁵ An example of such a unit is shown in RWLB IV, Organization Chart, dated March 3, 1944.

purpose of management cannot be regarded as static. Before the National Board policy had crystallized to any delegable extent, organization by area was most effective. However, in the latter days, when applicants had exhausted their possibilities for increases under the Little Steel Formula and the bracket system, internal organization based on a combination of areal, industrial, and procedural specialization was most effective. Because of regional differences in geographical area and in industrial development, the National Board was wise in allowing the regions to determine their own divisional organization.

VOLUNTARY CASE PROCEDURE

When a Wage and Hour Division received a Form 10 from an applicant, it would transmit it to the administrative management division of a regional board. This division would assign a docket number, properly distribute the multiple copies of the Form 10, and clip the materials in case folders. In some regions the administrative management division assigned cases to analysts. Although it would have been theoretically sound to analyze cases in the order of their docket numbers, the absence of established brackets for workers in given labor market areas, the lack of necessary information on the Forms 10 to process the cases, and the varying ease and difficulty of reviewing different types of cases made this theoretical goal impracticable.

WORK OF THE WAGE RATE ANALYST:

When an analyst opened a case folder, his first concern was that the application was properly filled out. If a recognized union were involved and if its representative had not signed the Form 10, then the application must be returned for signature. When the applicant gave an equivocal answer to the question asking whether price relief was to be sought if a wage increase were granted, the application had to be returned for an unequivocal answer.⁶ After checking the application for information required before processing, the analyst checked the information about the applicant's own business. Had he followed instructions in giving separate job classifications? Had average straight-time hourly earnings been properly computed? Were present and proposed rates for pertinent job classifications clearly stated? By the time a case reached an analyst, the Forms 10 had been previously checked for accuracy and completeness. Wage and Hour offices were supposed to determine whether the application had been filled out properly, and the screening unit responsible for assigning cases to analysts also was occasionally given the same responsibility. Some cases lacking information about present and proposed rate structures and lacking answers to necessary questions did slip through.

⁶ Lloyd Garrison, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Handling of Equivocal Answers to Price Relief Questions," dated December 9, 1943.

(1) JURISDICTION

In reviewing an application, the analyst often found that the proposed adjustment did not need approval under Board policy. The issuance of a "Form 2" corrected the error. The Form 2 instructed the applicant that he did not need Board approval to make his adjustment. Forms 2 were, however, issued by the legal division. Deciding whether or not to issue a Form 2 was predominantly a jurisdictional question, the answer to which rested upon economic fact as well as interpretation of law. As a result, there was a hazy line separating the authority of the wage stabilization division and the authority of the legal division.⁷ This situation resulted in poor personnel relations and bad feelings in some of the regions.⁸ To prevent such conflict, some boards adopted a strict procedure for handling those cases about which two divisions disagreed.⁹ Generally, however, the legal division lawyers did not try to impose their opinions on the wage stabilization division.¹⁰ Some legal divisions used economists, as well as lawyers, for this work.

(2) FINDING FACTS AND GETTING INFORMATION

Obtaining sufficient information to complete faulty applications occupied much of the analyst's processing time. When the application was a joint one by an employer and a labor organization, both parties had to be notified of information that was sought and both had to agree to all additional facts submitted. Information concerning the company was obtained by regular correspondence, by telephone, and by personal interview. Correspondence by mail was time-consuming and was used to obtain information from applicants whose businesses were located at a telephone toll distance from the regional office. A letter requesting additional information often brought the applicant to the office in person. There he could present his facts and also argue his case with the analyst. In some instances personal interviews provided the necessary information and gave the analyst a valuable insight into the company's wage structure. In other instances, mostly where small businesses were involved, personal interviews proved to be fruitless and time-consuming, for the interview served mostly as an opportunity for the employer to argue his case emotionally. The telephone was used to obtain information from applicants whose plants could be reached by a "local" call.

After the analyst collected sufficient information about the applicant's own wage structure and his proposed adjustment, he needed comparative information to use as a basis for his recommendation.

⁷ Jurisdictional relationships between field offices' legal divisions and the other operating divisions are often strained. For the experience of the Office of Price Administration, see E. S. Redford, *op. cit.*, p. 34.

⁸ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, pp. 124 f.

⁹ RWLB II, *Minutes*, October 20, 1944.

¹⁰ For a general discussion of lawyers in administration, see Fritz Morstein Marx, "The Lawyer's Role in Public Administration," *The Yale Law Journal*, LV (April, 1946), pp. 498 ff.

As a result of the "most frequent rate" system contemplated by the shortened procedure, regional boards had begun collecting wage rate data that was later used for "sound and tested going rates" under the Byrnes formula. To compile the necessary rates, the National Board initially anticipated the use of 100 employees of the Bureau of Labor Statistics, 100 men from the Wage and Hour Division, and 50 economists from the staffs of the regional war labor boards.¹¹ The plan to supplement the Bureau of Labor Statistics staff with Wage and Hour Division and RWLB employees was soon abandoned because "of the loss of time that would be involved in the Bureau were it to release recent accessions and . . . train more War Labor Board analysts in wage collection methods."¹²

Some regions at this time supplemented the systematic wage rate collection of the Bureau of Labor Statistics by sending tripartite fact finding panels into the field. These panels gathered the prevailing rates for specific industries and occupations on which the boards had cases.¹³ Some panels actually collected little information, but they decided prevailing rates on the basis of their own knowledge and experience. They occasionally "rejected as inadequate and invalid the occupational wage data provided by the Bureau of Labor Statistics."¹⁴

Throughout their existence the regional boards continued using tripartite panels in the field to collect wage rate data and to suggest brackets. However, the panels were normally used only for the larger and more important industries and occupations within the area. One regional board sent fourteen days advance notice to the unions and to the employers of a locality where a panel was to hold hearings.¹⁵ One region found it advantageous to supply its panels with technical advisors, but budgetary limitations impeded their use.¹⁶ All regions obtained wage rate information through the industry and labor board members.

¹¹ *Verb. Trans.*, Meeting of Regional War Labor Boards East of the Mississippi, March 20, 1943, p. 5. See also J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report from RWLB VII," dated April 10, 1943; and R. K. Burns, RWLB VI, Regional Chairman, to Executive Director, Memorandum, Subject: "Operations in Region VI for the Week Ending May 1, 1943," Not otherwise dated.

¹² Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Loan of Wage Analysts," dated May 4, 1943.

¹³ See *Verb. Trans.*, Meeting of Regional War Labor Boards East of the Mississippi, March 20, 1943, pp. 59 ff; L. M. Gill, RWLB V, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Weekly Report on Regional Board Activities," dated March 22, 1943; and Carroll R. Daugherty, Chief, Review and Analysis Division, to George Taylor, Public Member, NWLB, Memorandum, Subject: "Visit to New York Regional Office," dated March 31, 1943.

¹⁴ Carroll R. Daugherty, Chief, Review and Analysis Division, to George Taylor, Public Member, NWLB, Memorandum, Subject: "Visit to New York Regional Office," dated March 31, 1943.

¹⁵ *Verb. Trans.*, December 8, 1943, pp. 416 f.

¹⁶ RWLB I, AFL Advisory Committee, *Minutes*, dated January 29, 1945. The statement is attributed to the chairman of the regional board.

who in turn obtained it through their respective organizations. One region found this source of wage information greatly enriched after the board succeeded in providing for suitable assistants to the industry and labor members.¹⁷ Applications on file in the boards' offices were another source of wage information.¹⁸ Unfortunately for the sake of accuracy, much that was taken from the files was useless. Some came from random rates in applications approved on the basis of the Little Steel Formula, so that the rate meant nothing. The Board had no way of knowing exactly how much these rates had been increased. Regional boards occasionally had their decisions overruled because their collection of wage rate data was faulty.

Most panels that collected wage rate data were authorized to recommend brackets to the regional boards.¹⁹ Panels were usually composed of regional board members, and they were usually tripartite. In contradistinction, one board experimented with a panel composed of the wage stabilization director and his two top analysts. This panel was given authority not only to establish brackets where it was able to collect the information, but also to decide some 200 cases that had arisen in the area.²⁰

After a panel had held a hearing and recommended brackets, the regional board usually retained authority finally to set them. The boards sometimes acted through industry committees,²¹ or through standing bracket divisions with permanent membership.²² Other boards reserved to themselves the power finally to decide brackets in their regular meetings.²³ The Fourth Regional War Labor Board found it effective to have a representative of the industry involved and a representative of the union involved sit with the Board in an advisory capacity when it was setting brackets.²⁴

The use of tripartite panels to collect wage rate information and to recommend brackets was reasonably satisfactory. However, budget considerations limited their use.²⁵ Although the panel method produced generally sound results, some panels—as a result of ineffective chairmen—degenerated into debating societies.²⁶

¹⁷ *Verb. Trans.*, December 8, 1943, p. 393.

¹⁸ For example, see J. A. Hoskins, RWLB VII, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, No Subject, dated May 22, 1943.

¹⁹ See *Verb. Trans.*, December 8, 1943, p. 441; and RWLB IX, Regional Chairman, "Weekly Report," dated July 30, 1943.

²⁰ T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Memorandum, Subject: "Report for Week Ending July 10, 1943," dated July 13, 1943.

²¹ RWLB XI, *Minutes*, April 6, 1943; and *Minutes*, May 25, 1943.

²² RWLB II, *Minutes*, May 20, 1943; and RWLB XII, Regional Chairman, "Weekly Report," dated July 2, 1943.

²³ RWLB VIII, Regional Chairman, "Weekly Report," dated May 25, 1943; and *Verb. Trans.*, December 8, 1943, pp. 441 ff.

²⁴ *Verb. Trans.*, December 8, 1943, p. 394.

²⁵ See RWLB V, *Minutes*, March 2, 1943; and RWLB VIII, Regional Chairman, "Weekly Report," April 3, 1943.

²⁶ RWLB I, *Verb. Trans.*, Anniversary Meeting, February 16, 1944, p. 215.

General guidance for the analyst was provided by the National Division of Wage Stabilization. The *Wage Stabilization Manual* covered only general NWLB policy. Each region instructed its staff in regional policy. Some boards used a regional manual,²⁷ a monthly staff letter,²⁸ or a report prepared by the analyst who presented cases to the board.²⁹

(3) PRESSURE

The analyst was not removed from internal and external pressures that tended to influence his consideration of a case. Visits to the office by sob-sister clients affected the "hearts" and sympathies of some analysts and consciously or unconsciously activated them into preparing analyses favorable to the applicant. Although some effort was made to shield the analyst from public pressure, case analyses often reflected the wails of a misunderstanding public. Some few analysts are known to have geared their analyses to favor their personal friends. Labor and industry board members often applied pressure to hurry the recommendation of a case or to analyze it in a particular way. This type of pressure placed the analyst in an awkward position. If he rebelled at such tactics, he might be regarded as uncooperative; and because of the member's presence on a personnel committee the analyst might later lose opportunity for promotion. On the other hand, if he complied, he might have to wrestle with his professional conscience and be accused by the opposing group as being "pro-" labor or business—as the case might have been. Although the analyst was not directly subject to the pressure of inquiring Congressmen, he felt it indirectly. Although the regional boards professed that they gave cases in which Congressmen were interested no preferred treatment, such protestations were far from the facts. A letter from a Congressman might result in a case being assigned to an analyst out of its numerical order, being analyzed immediately, being re-analyzed, or being analyzed favorably. Any type of pressure upon the professional staff tended to lower morale.

(4) THE WAGE ANALYSIS

The work of the analyst was finally reflected in a case analysis. The case analysis usually was a typewritten document covering a single sheet. An analysis of a complicated case involving many job classifications might cover fifteen to twenty pages with accompanying tables and statistical tabulations. If a case were to be decided by a regional board

²⁷ See RWLB X, Regional Chairman, "Weekly Report," dated November 6, 1943, and RWLB XII, G. B. Noble, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "July Report," dated July 30, 1945.

²⁸ C. R. Daugherty, NWLB, Director of Wage Stabilization, to T. L. Norton, RWLB II, Regional Chairman, Memorandum, Subject: "Staff Letter," dated May 7, 1945.

²⁹ M. T. Van Hecke, RWLB IV, Regional Chairman, T. W. Kheel, Executive Director, Memorandum, Subject: "Bi-Monthly Report on Regional Board Activities for Period Ending March 11, 1944," dated March 11, 1944.

itself, the analysis was usually longer and more complete. If the case were finally to be decided by a director of wage stabilization, the analysis might be simply a handwritten memorandum. Some regional boards required that the analysis contain the analyst's recommendation for disposition of the case. Others preferred simply a statement of the case with an explanation of the issues it involved.³⁰

THE SECTION CHIEF

After an analyst had summarized a case, he submitted it to his section chief. If the case involved basic issues not yet decided by the regional board, the section chief might add his own recommendation or opinion and submit the case to the director of wage stabilization for a ruling. If the case were a routine one, the section chief usually prepared the letter constituting the director's ruling and signed the director's name.

THE WAGE STABILIZATION DIRECTOR

The many functions of the wage stabilization director made it impossible for him personally to rule upon all cases. In the early months of 1943, the instability of board policy and the directors' insistence upon personally considering each and every case greatly multiplied administrative difficulties and considerably delayed the issuance of rulings. The administrative naïveté of the National Board was another factor that prevented effective use of the section chiefs at a time when the regional boards were young. Almost a year after decentralization of wage stabilization had begun, the NWLB's Executive Director wrote a regional chairman: "The Wage Stabilization Director ought not to subdelegate responsibility for rulings. Authority has been vested in him by the Regional Board and not in his subordinates. He should therefore personally sign and assume responsibility for all such rulings. . . ."³¹ If a case were to be presented to a regional board, there was a greater possibility that the regional director would personally consider it.

Shortly after their establishment the regional war labor boards began determining—in limited fashion—the cases on which the regional directors of wage stabilization serving under them could rule—even though at this early time the National Board itself specifically and directly defined the regional wage stabilization directors' jurisdiction.³² In mid-May of 1943, a meeting of regional chairmen in Washington recommended to the National Board that

³⁰ Case analyses of the various regional boards were basically the same in content, though the form of the analyses changed with changes in board policy. Descriptive accounts of the problems involved in case analyses are contained in "RWLB Digest," dated March 18, 1943; RWLB V, "Monthly Report on Operation of Regional Office," dated July 1943; RWLB VI, *Minutes*, December 15, 1943; and RWLB XII, *Minutes*, March 13, 1944.

³¹ Lloyd Garrison, Executive Director, to Robert Burns, RWLB VI, Regional Chairman, Letter, dated September 21, 1943.

³² This tendency is reflected in NWLB, *Verb. Trans.*, Meeting of RWLBs East of the Mississippi, March 20, 1943, pp. 14 ff; "RWLB Digest," March 18, 1943; and RWLB IX, Regional Chairman, "Weekly Report," dated April 9, 1943.

Matters of policy, whatever the size of the case, should be determined by the Regional Boards, but routine application of such policy decisions, once made, may in the discretion of each Regional Board and as defined by the Regional Board, be delegated to the Wage Director, with such specific instructions as the Regional Board may lay down.³³

The National Board adopted the recommendation, which thereafter remained part of the regional boards' authority.³⁴

Allowing the regional boards to determine the cases on which the wage stabilization directors should finally rule resulted in a greater percentage of cases being ruled upon by the regional directors and fewer by the regional boards. Immediately after they received power to determine the jurisdiction of the wage stabilization directors, the boards were miserly in delegating authority. This situation was the result of both the boards' yet uncrystallized policies and a failure immediately to understand the administrative necessity for delegation. The sooner the wage stabilization director gained his board's confidence, the sooner the board delegated him authority. Personality was important.

Table I indicates that during the year prior to V-J Day, the directors of wage stabilization made initial rulings on approximately 96 percent of all cases decided by the regional boards. The percentage of cases decided by directors of wage stabilization varied substantially among the regions. The regional caseload does not, however, seem to have affected the percentage of cases initially ruled upon by the wage stabilization directors or the regional boards themselves.

Initially, wage stabilization directors were delegated specific power to rule on limited types of cases. Criteria for limiting authority included the total number employed in the plant, the total number for which an adjustment was sought, or some similar quantitative measure.³⁵ Three months after the system had been in operation, the National Board estimated that the regional boards had authorized their wage stabilization directors to rule upon approximately three-fourths of the applications.³⁶

Board techniques for delegating authority varied widely. Some boards shifted the burden. They authorized the director to rule on all cases he thought proper. The broadest grant of authority was made by the Fourth Regional War Labor Board:

³³ Lloyd K. Garrison, Executive Director, to NWLB, Report: "Week-end Meeting with Regional Chairmen," dated May 17, 1943.

³⁴ *Verb. Trans.*, May 18, 1943, p. 207; NWLB, "Instructions to RWLBs for Operations under Executive Order No. 9328 and Under the Supplementary Directive of May 12," dated June 1, 1943; and Lloyd Garrison, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Amended Instructions for Processing Cases under May 12 Supplementary Directive," dated July 27, 1943.

³⁵ Carroll R. Daugherty, National Director of Wage Stabilization, to George W. Taylor, Vice-Chairman, Memorandum, Subject: "Authority of the Regional Wage Stabilization Directors," dated August 27, 1943.

³⁶ *Loc. cit.*

The Wage Stabilization Director is authorized to approve or disapprove those voluntary applications for wage or salary adjustments properly before the Fourth Regional Board, which, in his judgment, do not involve questions of sufficient importance or novelty to warrant presentation to the Board.³⁷

TABLE 1
APPLICATIONS FOR VOLUNTARY WAGE OR SALARY ADJUSTMENTS
DECIDED BY REGIONAL WAR LABOR BOARDS, BY AUTHORITY
MAKING DECISION, JULY 1, 1944-AUGUST 17, 1945*

Region	Number			Percent Distribution		
	All Cases	Wage Stabilization Directors	Tripartite Boards	All Cases	Wage Stabilization Directors	Tripartite Boards
I.....	19,438	18,613	825	100	95.8	4.2
II.....	33,987	32,981	1,006	100	97.0	3.0
III.....	21,387	20,629	758	100	96.4	3.6
IV.....	18,804	18,373	431	100	97.7	2.3
V.....	18,519	18,462	57	100	99.7	.3
VI.....	31,390	30,174	1,216	100	96.1	3.9
VII.....	13,238	12,678	560	100	95.8	4.2
VIII.....	11,932	10,395	1,537	100	87.1	12.9
IX.....	4,465	4,342	123	100	97.2	2.8
X.....	13,324	12,837	487	100	96.3	3.7
XI.....	10,554	9,812	742	100	93.0	7.0
XII.....	4,955	4,535	420	100	91.5	8.5
Hawaii.....	1,503	1,158	345	100	77.0	23.0
Total.....	203,496	194,989	8,507	100	95.8	4.2

*See Table 16, *Term. Report*, p. 818.

By contrast, RWLB II in New York did a particularly fine job in delegating specific authority to the wage stabilization director. The board provided standards for making decisions and for determining whether the case should be brought to the regional board itself for

³⁷ RWLB IV, "Delegations of Authority to Wage Stabilization Director," No date. The authority quoted in the text was adopted on August 17, 1944. Region I had a similar policy. It delegated "to the Wage Stabilization Director authority to rule upon all cases . . . except those involving questions of policy and those involving questions of judgment on which the Wage Stabilization Director wishes Board action." Several specific types of cases were, however, excluded from this broad grant. See RWLB I, "Delegation of Authority to Wage Stabilization Director," dated April 24, 1945.

action.³⁸ Other boards delegated authority on the principle of expedition and made general grants with some type of quantitative limitation.

Within the scope of his authority, a director of wage stabilization could issue Form 10 rulings directly to the parties. However, if the director disapproved the application or if he only partially approved it, the applicant could apply for reconsideration. Under this process, the director would again consider the application and issue a second ruling affirming or modifying his first. A few regional boards recognized no procedural distinction between the reconsideration procedure and the appeals procedure, which is described below. Instead, on all cases on which reconsideration was requested, the director would submit the case directly to the regional board.

CONTROL OVER DECISIONS OF THE REGIONAL WAGE STABILIZATION DIRECTOR

A regional board's control over and supervision of the wage stabilization director was achieved in many ways. The "Rules of Organization and Procedure" required the director to file with the regional chairman a copy of all rulings made under his name.³⁹ The regional chairman was further obligated to lay before his RWLB "all rulings which involve serious questions of policy." The wage stabilization director was always at liberty to request guidance and advice from his regional board. However, in many instances the boards tended to pass the buck back to the director.⁴⁰ The public members of some regional boards operated as commissioners in a strict sense. One of them would assume responsibility for the wage stabilization division, whose director would work very closely with the board member.⁴¹

Regional boards also used tripartite committees to guide the wage stabilization directors. These committees served one or all of three functions. First, they might prepare, review, and analyze the board's delegation of authority. Second, they might act as a consulting committee to which the director might bring his more difficult or complicated cases for advice. Third, the committee might make a sample post-review of all cases decided initially by the director.⁴² Occasionally, the director was required to prepare a summary of cases that he had decided. Such a summary usually included the name and number of the case, the nature of the application, and the action taken.⁴³ One board required

³⁸ An example of such delegation is contained in RWLB II, *Minutes*, dated August 4, 1943.

³⁹ 29 *CFR*, 1943 *Supp.*, 802.55.

⁴⁰ A good example is contained in RWLB III, *Minutes*, June 29, 1944.

⁴¹ This situation is partially described in "Report on the Meeting of the Wage Stabilization Directors in Chicago," January 18, 19, and 20, 1945.

⁴² See RWLB I, *Minutes*, April 10, 1945; RWLB V, "Monthly Report on Operations of Regional Office," dated July, 1943; and RWLB IX, Regional Chairman, "Weekly Report," dated April 13, 1944.

⁴³ RWLBs I, experience with this system may be followed in its *Minutes* dated June 1, 1943, October 26, 1943, and April 11, 1944.

the director to lay all rulings before the board for a period of twenty-four hours before he could issue them.⁴⁴ All of these various methods tended to prevent the wage stabilization directors from ruling autonomously.⁴⁵

The most formal method of regional board control over rulings of the directors of wage stabilization was the appeals system. If the director denied or only partially approved a Form 10 application, the applicant, as a matter of right, could appeal his case to the regional board itself. This system of appeal operated in addition to the applicant's right to request reconsideration from the wage stabilization director. An applicant might request appeal even though he had not requested reconsideration. Applicants were allowed 14 days after the mailing of the director's ruling in which to exercise their right of appeal.⁴⁶ Some boards allowed oral hearings on appeals cases.⁴⁷ When appeal was requested, the director could modify his ruling at any time prior to action of the board. If the case had already been reconsidered by him he usually made no attempt to exercise this power.

When an appeals case reached board level, it was customarily not handled by the full board,⁴⁸ but rather by a tripartite committee of the board.⁴⁹ In the earlier days, this group had the title Appeals Committee. In the later days, when the boards used multifunctioned committees, the group handling the appeals might be called by any title, such as "reconsideration committee," or "review committee," or "post-directive committee."⁵⁰ Powers, as well as titles, of these committees varied. The actions of some, if taken unanimously, were deemed to be the rulings of the regional board itself.⁵¹ Other committees had authority only to recommend action to the full regional boards.⁵² Some committees were themselves empowered to determine whether a case should be presented to the boards.⁵³ In some regions, the full board would act

⁴⁴ RWLB VIII, Regional Chairman, "Weekly Report," dated April 7, 1943.

⁴⁵ Other problems of the control and supervision of directors of wage stabilization are discussed in Chapter XIV.

⁴⁶ 29 *CFR*, 1944 *Supp.*, 802.55. In the earlier days of the Board, only ten days were allowed for appeal purposes.

⁴⁷ For examples, see RWLB VII, *Minutes*, August 24, 1943, and RWLB XII, *Minutes*, July 13, 1943.

⁴⁸ In Region IX, the full Board sometimes acted. See RWLB IX, *Minutes*, December 27, 1944.

⁴⁹ For a time Region IV used an administrative committee composed partially of staff members. M. T. Van Hecke, RWLB IV, Regional Chairman, to T. W. Kheel, Executive Director, "Report for Two Weeks Ending June 24, 1944," dated June 24, 1944.

⁵⁰ For examples, see RWLB VII, *Minutes*, January 30, 1945; NWLB, "Newsletter," July 17, 1943, p. 2; "RWLB Digest," March 18, 1945; and *Term. Report*, p. 682.

⁵¹ RWLB VI, *Minutes*, April 7, 1943, and RWLB VIII, *Minutes*, August 23, 1943.

⁵² RWLB V, *Minutes*, March 3, 1943.

⁵³ RWLB IX, Regional Chairman, "Weekly Report," dated March 2, 1943.

only perfunctorily on the committee's recommendations. In others, cases would be considered anew.

Table 2 indicates that the right of appeal to regional boards from decisions of wage stabilization directors was exercised rather freely.⁵⁴ As the boards matured, a *smaller* percentage of decisions of the wage stabilization directors was upheld! Even recognizing that the statistics in Table 2 are based upon *cases*, rather than issues involved, and recognizing the difficulties of evaluating control and supervision by statistical means, one is inclined to conclude that the regional boards' control and supervision over the directors of wage stabilization was ineffective.

TABLE 2
APPEALS FROM RULINGS OF WAGE STABILIZATION DIRECTORS ON
VOLUNTARY APPLICATIONS, JULY 1, 1943-AUGUST 17, 1945*

Period Covered	Applications Decided		Appeals Received		Appeals Disposed of					
	Total	Partially Approved or Denied	Number	Percent	Upheld		Reversed		Modified	
					Number	Percent	Number	Percent	Number	Percent
July 1, 1943 to June 30, 1944...	155,097	81,815	20,264	24.8	6,126	38.5	3,532	22.2	6,258	39.3
July 1, 1944 to August 17, 1945	194,989	104,514	32,146	30.8	10,197	32.0	7,714	24.2	13,929	43.8
Total.....	350,086	186,329	52,410	28.1	16,323	34.2	11,246	23.5	20,187	42.3

*See Table 23, "Appeals from rulings of regional wage stabilization directors on voluntary applications," *Term. Report*, p. 506.

INITIAL RULINGS BY THE REGIONAL BOARD

Although the regional wage stabilization directors initially decided the majority of voluntary cases, the regional boards themselves took initial action on some cases. Some boards experimented on deciding cases from the application blanks alone and without the benefit of preliminary research.⁵⁵ This method was, however, quickly discarded. The board, one of its committees, or one of the board-level divisions usually acted on a preliminary analysis prepared by the wage stabilization division. Regional boards often used subordinate tripartite divisions or committees to act for them in voluntary cases.⁵⁶ Some regions utilized tripartite board committees, called "screening" divisions, to discuss the voluntary cases and to make recommendations to the full board.⁵⁷ Some re-

⁵⁴ The problem of appeals is discussed verbally, but tersely, in RWLB I, *Verb. Trans.*, Board Meeting, dated March 21, 1944; and in Sylvester Garrett, RWLB III, Regional Chairman, to NWLB, Memorandum, Subject: "Report of Regional Board III Activities for Week Ending July 2, 1943," dated July 3, 1943.

⁵⁵ RWLB II, *Minutes*, March 4, 1943.

⁵⁶ RWLB VIII, *Minutes*, June 13, 1945, and RWLB IX, *Minutes*, March 26, 1943, provide examples.

⁵⁷ RWLB I, Regional Chairman, "Weekly Report," dated February 19, 1943; RWLB II, *Minutes*, January 11, 1944; RWLB II, Regional Chairman, "Weekly Report," dated May 27, 1944; RWLB III, Regional Chairman, "Weekly Report," dated March 29, 1943; and RWLB VI, *Minutes*, April 7, 1943.

gions further specialized and had board-level divisions, acting as tripartite board committees, representing different industries. These divisions would pre-review voluntary cases and also determine proper brackets for the industry. RWLB II in New York made frequent use of division specialization.⁵⁸

During the fourteen month period from July 1, 1944, to August 17, 1945, the wage stabilization directors decided approximately 195,000 cases, whereas the regional boards themselves decided 8,500 cases.⁵⁹ Table 3 indicates that the regional boards collectively were no more liberal in approving voluntary adjustments than were their wage stabilization directors. In six regions, the boards were more liberal in the sense that they approved in full a higher percentage of applications than did their wage stabilization directors. In the other six regions, the wage stabilization directors appear to have been the more liberal.

TABLE 3

APPLICATIONS FOR VOLUNTARY WAGE OR SALARY ADJUSTMENTS DECIDED BY REGIONAL WAR LABOR BOARDS, BY AUTHORITY MAKING DECISION AND NATURE OF ACTION, JULY 1, 1944-AUGUST 17, 1945*

Region	Cases decided by Wage Stabilization Directors Percent Distribution			Cases decided by Tripartite Boards Percent Distribution		
	Approved in Full	Approved in Part	Denied in Full	Approved in Full	Approved in Part	Denied in Full
I.....	61.0	30.4	8.6	52.8	33.5	13.7
II.....	37.0	50.0	13.0	59.7	31.2	9.1
III.....	54.9	33.2	11.9	43.9	42.9	14.1
IV.....	44.9	43.5	11.6	45.9	37.6	16.5
V.....	48.5	37.1	14.4	43.0	45.6	10.5
VI.....	42.5	42.2	15.3	38.6	45.1	16.3
VII.....	43.9	40.6	15.5	60.2	24.5	15.3
VIII.....	60.6	33.6	5.8	50.4	37.5	12.1
IX.....	55.8	33.9	10.3	59.3	23.6	17.1
X.....	32.6	51.3	16.1	48.9	37.8	13.3
XI.....	56.0	33.6	10.4	49.8	44.1	6.1
XII.....	28.8	49.5	21.7	30.0	59.0	11.0
Hawaii.....	52.4	35.0	12.6	59.4	29.9	10.7
Total.....	46.6	40.6	12.8	49.1	38.3	12.6

*See Table 17, *Term. Report*, p. 818.

RECONSIDERATION BY THE REGIONAL BOARD

Even though a regional board had made the initial ruling on a voluntary case, the applicant might petition for reconsideration at any time within 14 days after the mailing of the board ruling. Grounds for reconsideration were limited to the discovery of "material and sub-

⁵⁸ RWLB I, Subordinate Units of Regional Board, dated February 7, 1944, also shows industrial divisions.

⁵⁹ Table 17, "Applications for Voluntary Wage or Salary Adjustments Decided by Regional War Labor Boards by Authority Making Decision and Nature of Action," *Term. Report*, p. 818.

stantial evidence" that was not available to the applicant prior to the board ruling and to cases in which later events made the ruling "harsh or unfair."⁶⁰ Regional boards were permitted further to restrict reconsideration, and several boards did limit reconsideration to cases that had not been previously appealed from the wage stabilization director.⁶¹

Rarely did a full board act directly on petitions for reconsideration, although occasionally it did handle them.⁶² Board action was more usually taken through or by a committee of the board. These committees were either tripartite post-directive committees,⁶³ tripartite review committees,⁶⁴ or tripartite committees on appeals and reconsideration.⁶⁵ For seven months Region IV in Atlanta used a committee, not tripartite, but composed mainly of administrative staff members. This committee on appeals and reconsiderations was

composed of one representative from each of the Divisions, namely, the Board, Legal, Disputes, and Wage Stabilization, together with the three Assistants [two labor and one industry]. . . . The Disputes Division will not be represented in voluntary cases and the Wage Stabilization Division will not be represented on non-wage dispute cases.

The Committee shall function as a conference and not as a parliamentary body. Any substantial difference of opinion should itself disqualify the Committee to act finally on any cases. When a vote is necessary there should be one vote from (when represented) the Division of Disputes, one from the Wage Stabilization Division, one from the Industry Assistant and one from the combined labor assistants.⁶⁶

The board encountered "various public relations and administrative situations" that arose because staff members were on the committee. A tripartite board committee was substituted.⁶⁷

In some regions committees handling reconsideration could act finally for the board "in the clear cases"⁶⁸ and when the committee was unanimously agreed.⁶⁹ In other regions and at other times, it could only recommend to the board, which would then take final action.⁷⁰

⁶⁰ 29 *CFR*, 1944 *Supp.*, 802.57.

⁶¹ For an example of such a restriction, see RWLB V, Regional Chairman, "Weekly Report," dated June 24, 1944.

⁶² See RWLB VIII, *Minutes*, February 8, 1945, and RWLB IX, Regional Chairman, "Weekly Report," April 9, 1943.

⁶³ RWLB II, *Minutes*, November 17, 1944; "Organization and Procedure for the Post-Directive Committee," in RWLB VI, *Minutes*, July 3, 1945; and RWLB XII, Regional Chairman, "Annual Report," dated May 5, 1944.

⁶⁴ RWLB X, Regional Chairman, "Weekly Report," dated July 31, 1943.

⁶⁵ RWLB XI, *Minutes*, August 2, 1944.

⁶⁶ Quoted from RWLB IV, "The Committee on Appeals and Reconsiderations," January 19, 1944. See also RWLB IV, Regional Chairman, "Weekly Report," dated January 22, 1944.

⁶⁷ RWLB IV, Regional Chairman, "Weekly Report," June 24, 1944.

⁶⁸ RWLB IV, Regional Chairman, "Weekly Report," dated September 23, 1943.

⁶⁹ RWLB VI, Resolution, dated February 16, 1944; and RWLB VII, *Minutes*, June 9, 1943.

⁷⁰ RWLB VI, *Minutes*, December 13, 1944; RWLB IX, *Minutes*, April 3, 1943; and RWLB X, Regional Chairman, "Weekly Report," dated January 21, 1944.

Table 4 indicates that the regional boards received petitions for reconsideration on 75.2 percent of all cases to which the procedure was applicable. Regional boards were more prone to uphold their own decisions in voluntary cases than they were to uphold the wage stabilization directors' decisions in cases that were appealed.⁷¹ Discrepancy in policy between the regional boards and the wage stabilization directors is again indicated.

TABLE 4

REQUESTS FOR RECONSIDERATIONS FROM RULINGS OF REGIONAL WAR LABOR BOARDS ON VOLUNTARY APPLICATIONS DECEMBER 3, 1943-AUGUST 17, 1945*

Period Covered	Applications Decided		Reconsiderations Received		Reconsiderations Disposed of					
	Total	Partially Approved or Denied	Number	Percent	Upheld		Reversed		Modified	
					Number	Percent	Number	Percent	Number	Percent
December 3, 1943 to June 30, 1944	6,413	3,323	1,414	42.6	452	35.3	302	23.6	528	41.2
July 1, 1944 to August 17, 1945	8,507	4,502	4,471	99.3	1,961	48.0	733	18.0	1,390	34.0
Total.....	14,920	7,825	5,885	75.2	2,413	45.0	1,035	19.3	1,918	35.7

*Compiled from Table 24. "Requests for reconsiderations from rulings of regional war labor boards on voluntary applications," *Term. Report*, p. 506.

SPEED AND REGIONAL RULINGS

One of the most persistent criticisms voiced against the NWLB was its slowness in making rulings. Although the total number of cases ruled upon by regional boards increased as the Board matured, the individual productivity of the analyst did not greatly increase. From January 1, 1943, to August 27, 1943, the weekly productivity of the average analyst varied from 13.1 cases in Region VII to 4.5 cases in Region XII.⁷² During this same period, the average productivity of all analysts was 6.7 cases per week.⁷³ From January through March 1944, the national average of analysts' productivity varied among the regions from 13 cases a week in Region IV to 4.3 cases per week in Region IX.⁷⁴ By the beginning of May 1944, the average weekly production per analyst had fallen to eight cases per week, but was on the increase.⁷⁵

The National Board attempted to increase productivity by setting

⁷¹ Compare Tables 2 and 4.

⁷² Joseph A. Hoskins, RWLB VII, Regional Chairman, "Special Report from the Chairman to the Members of the Regional Board," dated November 23, 1943.

⁷³ T. W. Kheel, Executive Director, to Saul Wallen, RWLB I, Regional Chairman, Memorandum, Subject: "Advice of Allotment of Funds and of Budget Approved Positions for the Fourth Quarter, Fiscal Year 1944," dated April 29, 1944.

⁷⁴ This information has been compiled from a series of letters from the NWLB's Executive Director to the Chairmen of the RWLBs. As an example, see Footnote 73.

⁷⁵ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, p. 130.

quotas for the regional boards, which would in turn set quotas for individual analysts. Periodic "drives" were held to clear out accumulated backlogs.⁷⁶ Because of the analyst's tendency to process the easy cases first in order to satisfy his quota, the system probably did little to increase over-all productivity. Productivity seemed to increase, temporarily at least, with an increase in case load. At a conference with the regional chairmen, Executive Director Kheel noted:

For a long period of time, our statistics showed on a nation-wide basis, the average analyst was turning out eight cases a week, . . .

In the last two months, our case loads have been jumping very rapidly. We were hitting about 3200 a week and then climbed to 34, 36, 38 and last week hit 5000.

. . . With the same staff that we have had for a period of a year and one-half, suddenly when the pressure comes on, by virtue of the inflow of cases and increased inflow of cases, the output suddenly starts to mount.⁷⁷

Regional boards would not have been able to increase productivity by further reducing research or professional standards, because when cases were not adequately processed the boards usually turned them back to the wage stabilization directors or the directors turned them back to staff members.⁷⁸

No statistics are available to reflect the delays in processing applications for the turbulent period from October 1942 through June 1943 or for a year later. Table 5 and Table 6 show that the regional boards' speed in processing voluntary cases was not appreciably greater in July 1945 than it was in July 1944. Among the regions, the speed with which cases were processed varied greatly.

Regional boards were slow in processing voluntary cases. During the period January to July of 1945, 9 percent of the cases awaiting initial decisions by the regional boards were older than three months.⁷⁹ In this same period approximately 2 percent of the cases were older than six months. Only 7 percent of pending voluntary cases were in the Board's "overage" category—older than nine months. These were the unusually difficult or complicated cases that required special statistical studies.

⁷⁶ See W. W. Wirtz, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Monthly Report," dated April 30, 1945; and T. L. Norton, RWLB II, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Weekly Summary—Week Ending January 8, 1944."

⁷⁷ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, pp. 130 f.

⁷⁸ For a general discussion of the issue of perfection versus speed in voluntary cases and analysis, see *Verb. Trans.*, Division A, July 17, 1944, p. A-61.

⁷⁹ See NWLB, Operating Statistics Section, Administrative Management Division, three tables entitled "Age Status of Pending Cases as of December 29, 1944," "Age Status of Pending Cases as of March 30, 1945," and "Age Status of Pending Cases as of June 29, 1945." No earlier records are available. All tables include only "Voluntary Cases."

TABLE 5

APPLICATIONS FOR VOLUNTARY WAGE OR SALARY ADJUSTMENTS
DECIDED BY REGIONAL WAR LABOR BOARDS BY LENGTH OF TIME
ELAPSED BETWEEN RECEIPT AND DISPOSITION OF
APPLICATION, JULY 1-31, 1944*

Region	Total Cases		Percent Distribution						
	Number	Percent	Less than 1 month.	1 mo., less than 2 mos.	2 mos., less than 3 mos.	3 mos., less than 4 mos.	4 mos., less than 5 mos.	5 mos., less than 6 mos.	6 mos. & over
I.....	1,791	100	55.9	25.5	10.0	4.8	1.7	0.4	1.7
II.....	2,684	100	59.8	29.2	5.9	2.7	1.0	0.6	0.8
III.....	1,857	100	68.9	24.7	4.1	1.3	0.5	0.3	0.2
IV.....	1,478	100	72.6	17.1	6.3	2.0	1.3	0.6	0.1
V.....	1,628	100	68.9	25.3	4.0	0.8	0.4	0.4	0.2
VI.....	2,288	100	70.4	16.2	5.8	3.1	2.3	1.0	1.2
VII.....	1,447	100	80.2	10.0	5.2	2.4	1.4	0.3	0.5
VIII.....	854	100	54.4	25.8	10.8	3.7	1.4	1.1	2.8
IX.....	375	100	72.5	19.0	4.5	3.2	0.3	0.5	...
X.....	894	100	45.4	28.9	13.0	5.7	2.6	1.8	2.6
XI.....	962	100	50.6	38.9	6.4	2.8	0.8	0.4	0.1
XII.....	408	100	64.4	20.1	5.4	4.2	3.9	1.0	1.0
Total.....	16,666	100	64.5	23.3	6.5	2.8	1.4	0.6	0.9

*Term. Report, p. 816.

TABLE 6

APPLICATIONS FOR VOLUNTARY WAGE OR SALARY ADJUSTMENTS DECIDED
BY REGIONAL WAR LABOR BOARDS, BY LENGTH OF TIME
ELAPSED BETWEEN RECEIPT AND DISPOSITION OF
APPLICATION, JULY 1-31, 1945*

Region	Total Cases		Percent Distribution						
	Number	Percent	Less than 1 month	1 mo., less than 2 mos.	2 mos., less than 3 mos.	3 mos., less than 4 mos.	4 mos., less than 5 mos.	5 mos., less than 6 mos.	6 mos. & over
I.....	1,600	100	66.0	25.8	5.7	1.5	0.7	0.2	0.1
II.....	1,978	100	71.7	15.2	7.0	2.5	1.7	1.1	0.8
III.....	1,775	100	59.3	30.1	7.9	1.8	0.6	0.2	0.1
IV.....	1,264	100	83.7	13.6	1.7	0.6	0.2	0.1	0.1
V.....	1,550	100	65.0	20.9	7.5	5.2	1.3	...	0.1
VI.....	2,290	100	71.0	15.5	6.5	3.1	1.3	0.9	1.7
VII.....	900	100	82.1	11.7	3.6	0.8	0.3	0.5	1.0
VIII.....	899	100	62.0	24.0	10.8	2.8	0.2	0.2	...
IX.....	290	100	73.8	22.4	2.4	0.4	0.4	...	0.6
X.....	968	100	55.9	21.5	10.3	5.4	2.0	1.8	3.1
XI.....	685	100	69.6	19.1	6.6	1.3	0.6	0.9	1.9
XII.....	386	100	60.9	25.6	7.3	3.4	1.0	1.0	0.8
Total.....	14,615	100	68.4	20.0	6.6	2.6	1.0	0.6	0.8

*Term. Report, p. 816.

During the period January to July of 1945, 12 percent of the cases pending decisions on appeals from rulings of the wage stabilization directors were older than three months.⁸⁰ In this same period approximately 3 percent of the appeals cases were older than six months. Only 1 percent of the pending appeals cases were overage.

During the period January to July of 1945, 15 percent of the voluntary cases pending reconsideration by the regional boards of their own decisions were older than three months.⁸¹ In this same period approximately 5 percent of the reconsideration cases were older than six months. Only 2 percent were overage.

The regional boards' slowness in processing voluntary cases is attributable to many factors. Since a large majority of the voluntary cases were decided initially by the wage stabilization directors, the delay cannot be entirely attributed to the tripartite composition of regional boards. Insofar as it contributed to the many changes in policy and procedure and to the lack of standards tripartitism caused delays. Insofar as the tripartite device was used for reconsidered or appealed cases, tripartitism was one reason for slow processing. Some cases were handled slowly because a tripartite committee had not yet developed brackets for the principal occupations. The Board's complicated appellate procedure itself delayed final decisions on many cases. The five steps—consideration by the wage stabilization director, reconsideration by him, appeal to the regional board, reconsideration by the RWLB, and finally appeal to the National Board—were time-consuming.

The great caseload of the regional boards was a factor that occasioned delays. The analysis of cases itself consumed time, and cases not being analyzed grew old in the pending file. During the fourteen months prior to V-J Day, the regions processed 200,000 applications for voluntary adjustments.⁸² The Board consistently maintained that it was understaffed. However, when compared to other war agencies, it is doubtful that the NWLB was short-handed. On the other hand, the presence of more analysts would have speeded the processing of voluntary cases. Regardless of a person's previous training in labor relations, time was required to acquaint him with a vacillating and indefinite Board policy. If a person were completely untrained in labor relations

⁸⁰ See NWLB, Operating Statistics Section, Administrative Management Division, three tables entitled "Age Status of Pending Cases as of December 29, 1944," "Age Status of Pending Cases as of March 30, 1945," and "Age Status of Pending Cases as of June 29, 1945." All tables refer to "Voluntary Appeals." No earlier records are available.

⁸¹ See NWLB, Operating Statistics Section, Administrative Management Division, three tables entitled "Age Status of Pending Cases as of December 29, 1944," "Age Status of Pending Cases as of March 30, 1945," and "Age Status of Pending Cases as of June 29, 1945." All tables refer to "Voluntary Reconsiderations." No earlier records are available.

⁸² See Table 16, "Applications for Voluntary Wage or Salary Adjustments Decided by Regional War Labor Boards by Authority Making Decision," *Term. Report*, p. 818. The number of cases processed by regional boards during the entire period of their existence is not available.

(and the Board—in order to fill its vacancies at all—was compelled to hire many an untrained person), his services were lost to the Board during his time of training. The Board could have speeded the processing of cases by adopting a clear-cut policy, by delegating the authority to the regional boards in specific terms, and then by consistently adhering to that policy. Failure to meet these conditions made the processing of each case an arduous, detailed, and elongated chore.⁸³

FACTORS AFFECTING A FAVORABLE DECISION

The NWLB's failure to adopt precise policies and to provide criteria for their use affected operating procedures and practices. Completely objective processing of cases was impossible. And the results reached in some cases were opposite to the results reached in others.

The possibility of a case being approved or of action on it being speeded up depended upon a number of factors. First, if the applicant were persistent enough to utilize the appellate processes of the Board, it was likely that his case would finally be approved. This situation resulted from the conclusion of some board members that "anyone who was persistent enough to appeal a case should probably have it approved."⁸⁴ Second, applicants who personally visited regional offices had a greater opportunity for a favorable ruling. Analysts, being human, reacted to pressure. One analyst, when questioned about a case analysis that involved a flagrant violation of wage stabilization principles, stated: "Well, the poor guy came down all the way from northern Wisconsin with tears in his eyes. We couldn't disapprove such a case."⁸⁵ Third, if the applicant's office were located in the same city as the regional board, the use of the telephone and the increased likelihood of personal visitation made this location effective in obtaining a speedy and effective treatment of the case.

Fourth, if an applicant could get a private conference with an industry or labor board member, the chances that his case would be approved were increased. For the board member became more interested in his case and so applied pressure on the wage stabilization director or on the regional board itself. Fifth, the hiring of a lawyer or an industrial relations expert was a distinct advantage. These specialists were entirely familiar with wage stabilization policy. In filling out applications they would use the specific phraseology of the official documents of the Board. Especially in the early days of decentralization

⁸³ This general problem is discussed in detail and in generality in "A Brief Critique on the Problem of Delay in the Processing of Cases," apparently written in December 1945. This monograph may be found in the NWLB Historian's files at the National Archives.

⁸⁴ Edgar L. Warren to Carroll R. Daugherty, NWLB Director of Wage Stabilization, Memorandum, Subject: "Report on Visit to New York Regional Office," dated March 29, 1943.

⁸⁵ John B. Parrish to Carroll R. Daugherty, NWLB Director of Wage Stabilization, Memorandum, Subject: "Evaluation of Work of Chicago Wage Stabilization Director," dated April 8, 1943.

when the original inequality program was in effect, the choice of words was highly important. Sixth, an opportunity for an oral hearing before the board was a distinct advantage. For here the applicant had an opportunity to "cry." He could explain about his "poor workers" and about "Susie's problem" of a sick mother to support. He could argue that a higher wage rate for a dishwasher would allow the applicant to feed student pilots more effectively so that the American Army might have more-and-better-fed pilots. Oral hearings resulted more in emotional exhibitions than in logical discussions.

Seventh, a large employer hiring many persons or a firm having a "big" name were likely to get favorable treatment. The boards, it has been shown, tended to be more liberal than the wage stabilization directors, and the larger cases were more often decided by the regional boards themselves. This type of employer was more likely to be unionized than the small employer hiring fewer persons. "Big" employers would be financially able to spend the time and money necessary to avail themselves of the other methods that would result in advantageous treatment. The denial of an application presented by a large employer would affect more people and thus have a tendency to create more adverse public opinion.⁸⁶

Finally, whether or not an application received favorable treatment depended in part upon sheer chance. Although wage analysts attempted to be objective, the way in which they wrote their analyses greatly affected the possibility of final approval by either the wage stabilization director or the regional board. An analyst whose *modus operandi* was based upon a strong belief in the principle of stabilization and an analyst whose *modus operandi* was based upon a strong belief (however accurate) in workers being highly paid might analyze the same case in entirely different fashion and reach directly opposite conclusions from the same statistical materials.

ENFORCEMENT

Preventing violations of wage stabilization policies and imposing penalties for their violation was concomitant to the processing of wage stabilization cases. And the NWLB was slow in formulating its procedure to handle enforcement cases. Not until mid-March of 1943 did the staff finally prepare a public statement on the Board's enforcement policy and procedure.⁸⁷ This proposed policy was then discussed at a meeting of the regional chairmen and division heads from regions east of the Mississippi.⁸⁸ On April 9, 1943, the National Board adopted a resolution effecting the program that had been discussed and authoriz-

⁸⁶ *Loc. cit.*

⁸⁷ Lloyd K. Garrison, Executive Director, to NWLB, Memorandum, Subject: "Chronology of Enforcement Policy," dated April 21, 1943; and *Verb. Trans.*, March 18, 1943, pp. 719 ff.

⁸⁸ *Verb. Trans.*, Meeting of the RWLBs East of the Mississippi, March 20, 1943, pp. 2 ff.

ing the use of Wage and Hour inspectors to conduct investigations on behalf of the Board.⁸⁹ The enforcement policy, as it had developed, was then discussed again at another meeting of regional chairmen and staff members.⁹⁰ While considering a minor amendment to its resolution of April 9, which had authorized the use of Wage and Hour inspectors, the Board repealed its basic resolution on enforcement.⁹¹ And the enforcement program was at a standstill. As a result of a memorandum to the Board from the Executive Director and as a result of extended discussion, the Board later, in effect, re-enacted its April 9 resolution.⁹²

The regional board legal division was primarily responsible for effecting the enforcement program. The enforcement section of the division determined whether Board policy had been violated and whether penalties should be invoked as a result of the violation. In its enforcement work, the legal division was guided by a board-level, tripartite, enforcement division and it worked closely in connection with the other operating staff divisions. Enforcement divisions might be composed partly of board members and partly of staff members. However, the National Board encouraged the regional boards to provide for permanent membership.⁹³

Enforcement sections within the legal divisions were normally no further subdivided, but work was distributed to the individuals available to perform it. RWLB X in San Francisco did subdivide its section into an initial complaint unit, an analysis unit, and a trial unit. The effect of this organization was the establishment of an "assembly line" for the processing of enforcement cases, and it was found to be successful.⁹⁵

The work of the enforcement section began when it was notified of an alleged violation of the stabilization program. This initial information might be revealed on a Form 1 or a Form 10. It might be unwittingly self-revealed by an employer asking the board for information. It might be directly provided by competing employers.⁹⁶ The regional boards' enforcement clinics also brought out alleged violations.

USE OF WAGE AND HOUR INSPECTORS

In connection with its enforcement investigations, the Board used the facilities of the Wage and Hour Division field offices. Since the enforcement program got a late start, these offices were not even noti-

⁸⁹ *Verb. Trans.*, April 9, 1943.

⁹⁰ *Verb. Trans.*, Meeting with Regional Chairmen, April 17 and 19, 1943.

⁹¹ *Verb. Trans.*, April 22, 1943, pp. 366 ff.

⁹² L. K. Garrison, Executive Director, to NWLB, Memorandum, Subject: "Chronology of Enforcement Policy," dated April 21, 1943.

⁹³ *Verb. Trans.*, April 22, 1943, p. 408.

⁹⁴ Jesse Freidin, General Counsel, to Chairman, RWLBs, All Regions, Memorandum, Subject: "Enforcement Instructions," dated September 6, 1944.

⁹⁵ RWLB X, Regional Chairman, "Weekly Report," dated May 1, 1944.

⁹⁶ *Verb. Trans.*, Meeting with Regional Chairmen, January 10, 1943.

fied of their duties until June of 1943.⁹⁷ The inspectors operating under Wage and Hour offices were used in four different ways. First, when an inspector visited a plant in connection with a wage and hour or a public contracts investigation, he also looked over the payroll for possible violation of the wage stabilization program. This type of investigation was known as a concurrent test check.⁹⁸ Had there been sufficient inspectors with sufficient time the concurrent test check would have shown more violations than were found. However, because of an insufficiency of personnel and an overload of work, several regions found it necessary to completely abandon this method.⁹⁹

A second method of using the Wage and Hour Division inspectors was the test check, as distinguished from the concurrent test check. The test check was made at the request of a regional board when it thought that a particular employer might be in violation. Test checks consisted of brief inspections involving comparison of company payrolls in pre-stabilization periods and of company payrolls since the beginning of the stabilization program. Changes approved by the NWLB were considered.¹⁰⁰

Full dress investigations constituted a third type of inspection service provided by the Wage and Hour Division. When a regional board initiated a full dress investigation, the inspectors performed all duties required of them under the test check procedure and then made additional tests. They would calculate precisely the amount that had been illegally paid. They would interview the employer or a sample of his employees for new evidence and for verification of evidence obtained through the payroll investigation. Regional boards generally requested full dress investigations only when they were reasonably certain that a company was in violation. At one time the National Board recommended that Wage and Hour Division inspectors be authorized to turn into a full dress inspection every test check that revealed a violation. A full dress investigation followed the standards laid down by the legal division under the direction of the board enforcement division.¹⁰¹

Fourth, the Wage and Hour inspectors conducted hearing investigations. Once the regional attorney, acting closely with the enforce-

⁹⁷ L. Metcalfe Walling, Administrator, Wage and Hour Division, to Wage and Hour Regional Directors, Memorandum, Subject: "Authorization to Make Inspections," dated June 4, 1943.

⁹⁸ See Secretary of Labor, *Annual Report*, for the Fiscal Year ended June 30, 1944 (Washington: Government Printing Office, 1944), p. 70; and Jesse Freidin, General Counsel, to Chairmen, RWLBs, All Regions, Memorandum, Subject: "Enforcement Instructions," dated September 6, 1944.

⁹⁹ See Philip C. Brownell and Sam Ganz to T. W. Kheel and Jesse Freidin, Memorandum, Subject: "Allocation of Inspection Facilities to Regions," dated August 9, 1944; and G. B. Noble, RWLB XII, Regional Chairman, to Lloyd Garrison, Executive Director, Memorandum, Subject: "Weekly Report, December 25-31, 1943," dated January 1, 1944.

¹⁰⁰ See Jesse Freidin, General Counsel, to Chairmen, RWLBs, All Regions, Memorandum, Subject: "Enforcement Instructions," dated September 6, 1944.

¹⁰¹ *Loc. cit.*

ment division, decided that a hearing would be necessary, he might need additional information in order to compile his case. In these instances, he would request a hearing investigation.

ENCOURAGING CONFORMANCE

Because it wanted to keep the public informed, a regional board often sat in different cities within the region. To get wide distribution of its releases, the boards attempted to publicize even small cases affecting local areas. The theory was that "it is the well-publicized local enforcement case which impresses the community with the importance of compliance."¹⁰² The National Board always realized that a well-informed public was necessary to the success of the stabilization program, and thus at an early date it tried to interest the regions in the public information program.¹⁰³

The most effective single method used by regional boards to attain widespread conformance with the stabilization program was the enforcement clinic. Regional board members and staff members from the information, wage stabilization, and legal divisions would move into a community for several days to a week. Mass meetings would be held in local auditoriums. Widespread publicity would be given to the clinic. The wage stabilization program would be explained in detail, and employers would be told the most effective method of getting into compliance. The regional boards' purpose was not vindictive, but corrective. Thus many employers would reveal their own violations willingly and sign stipulations. This would reduce the work of the boards and effect conformance. Enforcement clinics were particularly effective when held in areas where wages and prices were the most inflated and when conducted at the time that the Office of Price Administration put on a similar enforcement drive.¹⁰⁴

Although the clinic method aided enforcement by preventing future violations of wage stabilization policy, it also brought out evidence of past non-conformance. And once he had evidence that possible violation had occurred, the regional attorney began consideration of the case. When he determined that the allegations of or indications of a violation did not prove to be true, he usually had authority to close the case.¹⁰⁵

¹⁰² "Report of Enforcement Committee," dated May 1, 1944, p. 32.

¹⁰³ See, for example, Lloyd Garrison, Executive Director, to All Regional Chairmen, Memorandum, Subject: "Information Activities in Region VIII," dated March 18, 1943, as an attempt to get action through the "praise" technique.

¹⁰⁴ For excellent examples of enforcement clinics and their efforts, see *Verb. Trans.*, Division B, December 13, 1944, pp. 65 ff: M. T. Van Hecke, RWLB IV, Regional Chairman, Memorandum, Subject: "Report for period October 1-31, 1944," dated October 31, 1944; W. W. Wirtz, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Monthly Report," dated April 30, 1945; and J. G. Donaldson, RWLB IX, Vice-Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Monthly Report," dated October 28, 1944.

¹⁰⁵ Jesse Freidin, General Counsel, to Chairmen, RWLBs, All Regions, Memorandum, Subject: "Enforcement Instructions," dated September 6, 1944, Footnote 6.

However, he acted only with the authorization of the board-level enforcement division. When the regional attorney thought that a minor violation had occurred, he would present the case to the board division for an authoritative determination that it was minor. Then he was authorized to close the case without further action by the board division.¹⁰⁶ Some regions eliminated the step of a board division determination that a case was a minor violation. In lieu thereof they set up criteria under which a case automatically became minor. In these instances they authorized action by the attorney. One region authorized the regional attorney to act in the place of the enforcement division in cases involving fewer than 25 employees and less than \$25,000 in violations.¹⁰⁷ At one time it was suggested that Wage and Hour inspectors be allowed to sign stipulations with the employers when test checks indicated violations, in order to eliminate further work for the regional boards.¹⁰⁸ This program was never adopted.

Many major cases, as well as minor ones, were settled without formal hearings before regional boards. In conformance with the general pattern of administrative activity, settlements by informal means greatly outnumbered settlements through formal hearing procedures. Many cases involving violations were closed by the "consent method." The board agent would confront the employer with the facts of his violation, point out that in similar cases the enforcement division had decided against the employer, and suggest that the employer stipulate to the facts. At the same time, the employer and the board agent would agree upon a reasonable penalty.¹⁰⁹ In these cases, penalties inflicted were generally lighter than similar cases involving hearings. The consent method proved administratively successful.

FORMAL PROCEDURE

When an employer would not agree to stipulate the facts and consent to the determination of a penalty, he was entitled to a hearing before the enforcement division or a tripartite panel established by it. In the preparation for and in the conduct of the hearing, full due process was accorded the employer accused of violation.¹¹⁰ The division or the panel would hear his arguments and the arguments of the regional attorney, who prosecuted the NWLB case. Where a tripartite panel was used to conduct the hearing, it could not make a final decision, but could only recommend disposition to the board-level enforcement division.¹¹¹

¹⁰⁶ *Loc. cit.*

¹⁰⁷ RWLB XI, *Minutes*, May 24, 1944. See also RWLB III, Regional Chairman, "Weekly Report," dated June 9, 1944; and G. B. Noble, RWLB XII, Chairman "Termination Report of Twelfth Regional War Labor Board."

¹⁰⁸ *Verb. Trans.*, Regional Chairmen Meeting, December 8, 1943, p. 14.

¹⁰⁹ *Verb. Trans.*, February 24, 1944, p. 658.

¹¹⁰ 29 *CFR*, 1944 *Cum. Supp.*, 802.72.

¹¹¹ NWLB, Field Memorandum, No. 34, Subject: "Violation Proceedings—Amendment of NWLB Rules of Procedure," dated September 15, 1944.

The enforcement division itself occupied a rather peculiar position within the authority of the regional board. Instructions to the regional boards provided that:

The personnel of the Enforcement Division in any region will be appointed by the Regional Board and the general policies and procedures of the Enforcement Division *should be* subject to the control of the Regional Board, provided they remain consistent with the basic policy and the procedures of the National Board which are applicable to all Regions. . . . *The decisions of the Enforcement Division in specific cases are not, however, to be subject to the review of the Regional Board.*¹¹²

It is queer administrative procedure where an agency may not review the acts of its subordinates for whose actions it, in turn, becomes administratively responsible. The purpose was, however, to achieve consistency in the application of penalty provisions. Once a determination of the amount of the penalty was made, the case was sent to the National Board for transmission to the Bureau of Internal Revenue.¹¹³

DIFFICULTIES OF THE ENFORCEMENT PROGRAM

Many difficulties beset the enforcement program of the National War Labor Board. Region IV in Atlanta never set up an enforcement division, but continued to handle problems of enforcement through the rotating weekly regional board meeting. The labor and industry members of the board were willing to serve, and the regular participation of the chairman resulted in consistency of policy. The Regional Board in Seattle inaugurated a novel system. At one of its weekly meetings, a labor member suggested that enforcement panels include one public accountant, one lawyer, and one public board member. The regional board, however, rejected this suggestion as to backgrounds necessary for the composition of the panels, but did adopt a resolution which provided:

That in the future, panels to hear violations should consist of three public members, rather than of one public, one labor, and one industry.¹¹⁴ Since the National Board set aside this resolution, the Seattle Board never used this procedure.

The reluctance of labor and industry members to participate in the enforcement program, insofar as it involved imposing penalties upon violators, led one staff member to suggest the establishment of a wage stabilization enforcement division under the Director of Economic

¹¹² Jesse Freidin, General Counsel, to Chairmen, RWLBs, All Regions, Memorandum, Subject: "Enforcement Instructions," dated September 6, 1944. I have supplied the italics.

¹¹³ Lloyd W. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Enforcement Program—Referral of Findings," dated May 21, 1943.

¹¹⁴ See RWLB XII, *Minutes*, March 22, 1944. Also the comments in G. B. Noble, RWLB XII, Regional Chairman, to William H. Davis, Chairman, NWLB. Letter, dated April 1, 1944.

Stabilization.¹¹⁵ The proposal was not, however, seriously considered. Industry and labor members objected to participating in the violations program for fear of later repercussions from employers upon whose cases they sat. Although both groups did participate, their activity was based more upon acquiescence than desire. There were logical arguments for their participation. If unauthorized increases were permitted to go unchallenged, then there was the possibility that organized labor might find itself in a disadvantageous position. For one strong argument favoring union membership is that the union can achieve a higher wage through collective bargaining than can the single individual offering his own services. On the other hand, since employers might be in competition for workers with employers in violation, the employers who conformed would be at a disadvantage on the labor market. It thus became advantageous to both groups to punish the offender.¹¹⁶ Some few public members were also opposed to participation in the violations proceedings, although this objection was not general.¹¹⁷

The difficulties involved in enforcing such a widespread program and the late start given the regions by the National Board were not offset by speedy or reasonable action by the regional boards. As late as mid-July of 1943, the important New York Regional Board had not held any hearings and had not undertaken to ferret out violations. It had merely investigated a few cases that had been brought to its attention.¹¹⁸

During the period of their existence, regional boards closed approximately 68,000 enforcement cases.¹¹⁹ At the end of December 1945 when the National Wage Stabilization Board undertook the function of finishing the enforcement cases that had been before the NWLB, approximately 9,400 cases were pending.¹²⁰

Analysis of NWLB statistics indicates that the regional boards were slower in deciding enforcement cases than they were in deciding voluntary and dispute cases.¹²¹

In carrying out the wage stabilization and enforcement programs, the National War Labor Board gave its regions much freedom to develop

¹¹⁵ Jesse Freidin, General Counsel, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Enforcement," dated May 29, 1944.

¹¹⁶ In this connection, see RWLB XII, *Minutes*, February 13, 1945.

¹¹⁷ For an example, see Lewis M. Gill, RWLB V, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Weekly Report of Regional Board Activities," dated October 16, 1943.

¹¹⁸ *Verb. Trans.*, July 16, 1943, p. 615.

¹¹⁹ Table I, "Number of enforcement cases closed," October 3, 1942—December 29, 1945, *Term. Report*, p. 437.

¹²⁰ U. S. Department of Labor, *The National Wage Stabilization Board* (Washington: Government Printing Office, 1948), Table I, "Enforcement cases received and disposed by RWSB enforcement divisions by region, January 1, 1945—January 30, 1947," p. 232. Compare in the text the figure given on page 226.

¹²¹ See NWLB, Operating Statistics Section, Administrative Management Division, Table 6, "Age Status of Pending Cases as of June 29, 1945," By Month During Which Case Was Originally Filed, dated June 29, 1945.

their own internal procedures and processes. This freedom enabled the regional war labor boards to be more effective than they would have been under a centralized system. It allowed the procedures and processes to be molded around the economic conditions of the area and around the particular men that were administering the program. It is usually more effective to mold procedures and processes to the environment under which they are to exist than it is to attempt changing the environment to fit the procedures and processes.

CHAPTER X

DISPUTES: POLICY FORMULATION AND DELEGATION

There is no escaping the fact that this framework of collective bargaining erected on the basic no-strike agreement contains an element of forced acceptance. It is in substance arbitration.

—William H. Davis, Chairman, NWLB, Release B-312, speech scheduled for delivery at the Hotel Astor, New York City, November 23, 1942.

This Government settlement of disputes cannot work at all except when, as in wartime, all labor disputes become affected with an overriding public interest; and even at that, I can tell this committee that the settlement of such disputes by the National War Labor Board was about worn out when the war ended. We were faced at that time with a break-down of collective bargaining and a threat of unauthorized and irresponsible cushioned strikes, as I call them, which might well have ended the usefulness of the National War Labor Board. . . .

—William H. Davis, Statement, "Labor Fact-Finding Boards Act," U. S. Congress, Senate, Committee on Education and Labor, 79th Congress, 1st Session and 2nd Session, Hearings on S 1661 (Washington: Government Printing Office, 1946), p. 120.

Applying general principles to specific factual situations on which two interested parties agree is difficult. This problem the regional war labor board faced in issuing rulings on voluntary cases.¹ However, applying half-emerged general principles to specific factual situations on which two interested parties disagree is more difficult. This problem the regional war labor board faced in issuing directive orders in dispute cases.

When a regional war labor board disapproved a voluntary application for a wage adjustment, union and management might be collectively dissatisfied with the ruling. However, the refusal of a wage increase in a voluntary case was not likely to lead to a strike or a lockout, because a strike or a lockout would affect labor or management primarily and not budge the board. One seldom does conscious injury to his friends. When a regional war labor board approved a voluntary application for a wage adjustment, union and management might be collectively satisfied.

By contrast, when a regional war labor board issued a directive order in a dispute case, union and management could never be collectively satisfied. For no decision of a board could possibly grant the opposing positions of both parties on any one issue. One further factor complicated a regional war labor board's activity in deciding a dispute case. In voluntary arbitration, the arbiter can often compromise the positions of both parties. But in making his award, the arbiter is not

¹ It is understood that when there was no recognized union in the plant, the voluntary case had only one directly interested party.

bound by any externally imposed general principles that he must use to evaluate the parties' respective positions. However, in issuing a directive order, a regional war labor board had to consider not only the general principles of wage stabilization, but also the National Board's case decisions on non-wage issues.

SOURCE OF NWLB AUTHORITY

Executive Order 9017 gave the NWLB its initial authority to settle dispute cases. The Order provided that the parties themselves were first to attempt settlement of their dispute. If private settlement failed, then they were to submit their disagreement to the United States Conciliation Service. If the Conciliation Service failed to settle the dispute, then the Secretary of Labor was to certify the case to the National War Labor Board. The Order specified,

After it takes jurisdiction, the Board shall finally determine the dispute, and for this purpose may use mediation, voluntary arbitration, or arbitration under rules established by the Board.²

Executive Order 9250 affected NWLB authority, because the Board was bound in dispute cases to grant wage and fringe adjustments to no greater extent and on no other principles than those enunciated in the Order. Executive Order 9328, the Byrnes clarifying directive, the Vinson directive, and the Davis clarification similarly affected the Board's freedom of action in dispute cases.

When the regional war labor boards were established, they were blanketed with the general powers of the National Board. This authorization stated simply,

. . . When the members of a Regional War Labor Board are appointed:

(a) The Regional War Labor Board is thereupon vested with all of the powers of the National War Labor Board subject to the provisions for review laid down in the decentralization plan of January 6, 1943 and to conformity with the policies and rules laid down by the National War Labor Board. . . .³

The National War Labor Board and consequently its regional boards were later given statutory authority to settle disputes by the War Labor Disputes Act.⁴ The Act provided no further standards to guide the Board, except in very general terms. It read:

The National War Labor Board . . . shall have the following powers and duties:

(2) to decide the dispute and provide by order the wages and hours and all other terms and conditions (customarily included in collective-bar-

² *CFR, Cum. Supp.*, 9017.

³ *Verb. Trans.*, February 18, 1943, p. 438.

⁴ 57 *U. S. Statutes* 163, Dated June 25, 1943. Sometimes referred to as the Smith-Connally Act.

gaining agreements) governing the relations between the parties, which shall be in effect until further order of the Board. . . . Where no other law is applicable the order of the Board shall provide for terms and conditions to govern relations between the parties which shall be fair and equitable to employer and employee under all circumstances of the case.⁵

Passage of the War Labor Disputes Act over Presidential veto did not interfere with the regional boards' activities in dispute cases in the manner that Executive Order 9328 interfered with their activity in voluntary cases. The boards continued processing dispute cases as they had been. They simply withheld the issuance of directive orders until the Act was clarified by the Washington office.⁶ Since the Act was interpreted not to have changed the Board's authority except in granting it the subpoena power, no regional activity was lost. Wide use of the subpoena power was not made by either the National Board or its regions.⁷ If a regional board wanted to issue a subpoena it had to apply to the National Board, which either granted or denied permission. The threat of the subpoena power often made its use unnecessary⁸

MEDIATION VERSUS ARBITRATION

In handling disputes, the main objective of regional war labor boards was to settle them, for strikes and lockouts interfered with wartime production. But what methods should be used?

(1) RELATIONSHIP BETWEEN NWLB AND USCS

The extent to which the National War Labor Board mediated, the extent to which the Board ought to have mediated, and consequently the relationship between the NWLB and the United States Conciliation Service are cardinal questions concerning the Board and its regions. Executive Order 9017 had authorized the use of mediation in finally determining disputes. However, the same Order specified that before the NWLB acquired jurisdiction of a case, the United States Conciliation Service would have tried to settle it.⁹ The Conciliation Service wished to preserve its *raison d'être* and consequently took the view that the NWLB ought not to mediate. Like most governmental agencies, which want to perpetuate and extend their own organization and functions, and like most peacetime agencies, which during war tend to orient

⁵ *Ibid.*, Section 7(a).

⁶ Lloyd K. Garrison, Executive Director, to All Regional Chairmen, Telegram, dated June 29, 1943.

⁷ The National Defense Mediation Board did not have the subpoena power. L. J. Jaffe and W. G. Rice, *op. cit.*, p. 20.

⁸ The administrative details for paying subpoenaed persons under the Act are given in T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Payment of Mileage Fees and Subsistence of Subpoenaed Witnesses," dated June 10, 1944.

⁹ The view that there is no distinction between mediation and conciliation is adopted in this paper.

their activities toward wartime functions, the Conciliation Service requested additional funds to carry out its program.¹⁰ On the other hand the NWLB, in an attempt to face its responsibility for finally determining disputes, reasoned that it should simplify its work, if possible, by settling any disputes it could through mediatory methods. Thus duplication of activity and agency egotism led to early jealousy between the two agencies.

Both the NWLB and the Service recognized the administrative paradox of their positions. As a result, in November of 1942, John R. Steelman, then Director of the Conciliation Service, and William H. Davis, Chairman of the NWLB, reached oral agreement that the Board would send no more mediators into the field.¹¹ The fact that in December the Board requested funds to hire 250 mediators is evidence that no one man could speak for the Board and evidence that "no one on the Board speaks with authority to or for the administrative staff."¹² Formal agreement between the two agencies was not achieved until January of 1943.¹³ The agreement read, in part,

3. The Board will not appoint mediators or conciliators. Panels or hearing officers will be concerned with passing judgment on the final action which should be taken.¹⁴

Formal agreement did not eliminate the overlapping of the mediatory function. As long as the NWLB and its regional boards were in existence, their staffs in the field did mediate.¹⁵ Formally the Board would never admit this activity. Under the circumstances, there is great ques-

¹⁰ Harold L. Enarson, Bureau of the Budget, to The Assistant Director, Bureau of the Budget, Memorandum, Subject: "Key Factors in the Handling of Labor Disputes and the Administration of the Wage Stabilization Program," dated January 3, 1943.

¹¹ H. L. Enarson, Bureau of the Budget, to David H. Stowe, Bureau of the Budget, Memorandum, Subject: "Dr. Steelman's Views on the War Labor Board, as developed in the hearing on the Conciliation Service Budget, December 29, 1943," dated December 30, 1942.

¹² Harold L. Enarson, Bureau of the Budget, to The Assistant Director, Bureau of the Budget, Memorandum, Subject: "Key Factors in the Handling of Labor Disputes and the Administration of the Wage Stabilization Program," dated January 3, 1943; and *ibid.*

¹³ The general problem of the relationship between the two agencies and general organization for handling labor disputes and wage stabilization is analytically discussed in David H. Stowe and Avery Leiserson, Bureau of the Budget, to the Director, Bureau of the Budget, Memorandum, Subject: "Alternatives of Policy in War Labor Board-Conciliation Service Situation," dated January 3, 1943.

¹⁴ War Labor Board and Secretary of Labor, *Memorandum of Agreement*, dated January 16, 1943.

¹⁵ The Bureau of the Budget's wartime staff is fond of relating the following story. Lloyd K. Garrison, then Executive Director of the NWLB, substituted one evening for the regular professor at an evening class in one of Washington's universities. At that time he lectured on the activities of the War Labor Board. He is alleged to have said, "We tell the Budget Bureau we don't mediate; we tell the President we don't mediate; we tell the Congress we don't mediate; but I'll tell you we do mediate." "Somehow or other," by noon the next day the Bureau of the Budget had acquired a "verbatim transcript" of Garrison's lecture. Bureau officials that afternoon confronted Chairman Davis with it. And it is claimed that they "got action."

tion whether the NWLB ought to have mediated to the extent that it did—duplication of effort or no duplication. It was evident very early in the history of the Board that unions and employers were attempting to by-pass the Conciliation Service and get to the NWLB as quickly as possible.¹⁶ The Service was thus in a position where, regardless of the skill of its conciliators, it became exceedingly difficult to settle disputes by mediation.

Especially was this true when a dispute involved issues on which the NWLB had not decided many cases, for it was impossible to predict Board policy in even broad terms. The tendency of individuals and groups subject to regulation to want decisions by the highest authority was clearly manifested in the wartime settlement of labor disputes. Thus when a dispute reached the Board, the parties had often made no real attempt to reconcile it by themselves nor to aid the Conciliation Service in achieving settlement.

(2) THE NATURE OF NWLB "MEDIATION"

Did the staff of the National War Labor Board "mediate"—in the sense in which the word is usually used? Could it, to the extent that it used tripartite panels to settle disputes, "mediate"? A competent student of labor relations wrote, prior to the existence of the NWLB,

When an official or agency intervenes in a labor controversy, proffers his good offices to hear both sides, and gives tactful suggestions as to a common ground for settlement, without any hint of coercion, the procedure is described by the word *mediation*. . . . To be successful, a mediator . . . must be well liked as to personality and respected for his impartiality and above all must be sympathetic and tactful. He must, in short, inspire complete confidence.¹⁷

In contradistinction, compulsory arbitration has been defined as the government's directly or indirectly compelling employers and employees to submit their disputes to an outside agency for decision. In a complete system of compulsory arbitration, government coercion is exercised at all five of the steps. . . . Differences *must* be submitted to arbitration; witnesses *must* testify and produce papers; the parties *must* refrain from strike or lockout during the investigation; the board *must* reach a decision and announce an award; the parties *must* observe the award and refrain from strike or lockout during its life.¹⁸

It is significant that the mediation process includes activity "without

¹⁶ See H. L. Enarson, Bureau of the Budget, to B. L. Gladieux, Bureau of the Budget, Memorandum, Subject: "Preliminary Hearing on the Program and Operations of the National War Labor Board, February 13, 1942," dated February 17, 1942; and the testimony of William Leiserson in "Labor Fact-Finding Boards Act," *Hearings*, January 16, 1945, Committee on Labor and Education, U. S. Senate, 79th Congress, 1st and 2nd Session (Washington: Government Printing Office, 1946), p. 146.

¹⁷ Carroll R. Daugherty, *Labor Problems in American Industry*, *op. cit.*, p. 127.

¹⁸ John R. Commons and John B. Andrews, *op. cit.*, p. 127.

any hint of coercion"; whereas the compulsory arbitration process uses governmental coercion.¹⁹

When a tripartite hearing panel was appointed by the NWLB or its agents, the panel would meet with the parties to the dispute. In the first stages of the hearing, the panel might encourage the parties to settle the dispute between themselves. Or, in the course of the hearing, the parties might themselves discover a basis for settlement. When such a settlement was achieved, the word "mediation" has been used to designate the method. However, the panel had been appointed by the Board and was operating under its authority. The disputants knew that the panel had authority to find facts and to recommend a solution within the terms of Board policy.²⁰ In this sense, the activities of the Board's panels and hearing officers could not be characterized as acting "without hint of coercion." A veiled threat of coercion lay behind their very presence at the scene of the dispute. To the extent that mediation requires that settlement be achieved through the good offices of a third party acting without coercive backing, the success of the Board in settling disputes without formal action was not mediation. This action by panels or hearing officers was simply informal settlement by a Board agent. If the issues that were settled in this manner were wage or fringe issues, the parties had to fill out a Form 10 and the Board ruled on its propriety.²¹ If the issues that were settled in this manner were non-wage or non-fringe issues, the Board was not concerned with the results of the settlement—although failure to settle would have resulted in an NWLB directive order.

"Impartiality" was noted as a characteristic of mediation. Indeed, the adjective "impartial" is usually attached to a description of the process.²² To the extent that the Board used tripartite panels to deal directly with the parties it could not have mediated at all, much less mediated well. Too often in panel proceedings the labor and industry members acted as open advocates of their respective interests and tried to convince the rest of the panel of the logic of their constituent's position. Advocacy does not convey impartiality. To the extent that tripartite panels were not impartial or to the extent that they had a "balanced partiality," they could not "mediate"—in the conventional sense of the term.

¹⁹ For a similar, though popular, distinction between mediation and arbitration, see William Leiserson, "Labor Faces a Crisis," *American Magazine*, CXXXIX (January, 1945), p. 21.

²⁰ H. L. Enarson, Bureau of the Budget, to Byron Mitchell, Bureau of the Budget, Memorandum, Subject: "Mediation Work of the War Labor Board," dated December 15, 1942.

²¹ See Crosetto and Jacobson to L. K. Garrison, Executive Director, Memorandum, Subject: "Atlanta," dated December 11, 1943.

²² See V. I. Green, *The United States Conciliation Service* (Washington: Catholic University Press, 1943), p. 44; and Secretary of Labor, *Annual Report*, for the Year Ended June 30, 1944 (Washington: Government Printing Office, 1944), p. 8.

(3) MODIFICATION OF PREVIOUS EXPERIENCE

The experience of previous labor boards has led to the generally accepted conclusions that the functions of mediation (in the pure sense of the term) and arbitration should not normally be combined in the same agency, and that the persons who act as mediators should not normally act as arbitrators in the same dispute.²³ To substantiate these conclusions, two reasons are usually given. First, the presence of the mediation and the arbitration function within the same agency generally serves to make the mediation ineffective. When the same person, or group of persons, acts first as mediator, later as fact finder, and still later as arbitrator, the parties are unwilling to participate in the mediation process. They fear that any concessions they make during mediation will be used against them later in the arbitral process. In true mediation, each party compromises his own position only in relation to his opponent's position. When informal settlement is achieved by an agency that also has arbitral functions, each party compromises his own position, not only in relation to his opponent's position, but also in relation to the regulations that he thinks might eventually be imposed by the arbitral agency. In labor relations it is probably unwise to subordinate the mediation function. For settlements that are imposed directly or indirectly upon the parties are rarely as effective as those achieved by the parties through uncontrolled mutual agreement.

Second, when the same agency performs both the mediation and the arbitration function, arbitration machinery becomes clogged. Caseloads mount. Disputes are aggravated because of their continued unsettled state. For effective labor-management relations, labor disputes ought to be settled quickly. If they pile up on an agency charged with their settlement, that agency is certain to incur labor's and management's ire.

The wartime labor experience modifies previous conclusions. To the extent that the NWLB encouraged voluntary settlement of differences between labor and management, the governmental purpose of preventing and quickly settling labor disputes was advanced. Tripartite panels and hearing officers primarily collected facts. Panels and hearing officers did not spend great amounts of time trying to settle *all* disputes informally. If in the course of finding facts a panel discovered that slight encouragement would bring the parties to an agreement, it did not insist on settlement by the Board. For it to have done so would have wasted precious man-hours and slowed down the settlement of other disputes. Thus the fact that the functions of "mediation"

²³ See the statement of President Robertson, Brotherhood of Locomotive, Firemen and Enginemen, in H. D. Wolf, *op. cit.*, p. 411; V. I. Green, *op. cit.*, p. 190; H. G. Brainard, *op. cit.*, pp. 187 f; L. L. Lorwin and A. Wubnig, *op. cit.*, pp. 129 ff; and David H. Stowe and Avery Leiserson, Bureau of the Budget, Memorandum, Subject: "Alternatives of Policy in War Labor Board—Conciliation Service Situation," dated January 3, 1943.

and arbitration were combined in the same agency was not a disadvantage.

It is true that the governmental policy of compulsory arbitration tended to make informal settlement less effective. However, informal settlement was less effective not because the functions of "mediation" and arbitration were combined under the National War Labor Board, but because compulsory arbitration itself makes informal settlement less effective. The existence of compulsory arbitration weakened the efforts of the United States Conciliation Service to mediate. However, the availability of compulsory arbitration to the Board often aided its agents in achieving informal settlement, where the Conciliation Services mediatory tactics had failed.

To the extent that both the National War Labor Board and the United States Conciliation Service encouraged voluntary settlement of labor disputes, duplication of governmental activity resulted. But duplication of activity does not, *ipso facto*, mean ineffective over-all administration. The wartime labor experience proves an exception to the idealistic principle that *all* duplication is to be avoided at all costs. The governmental objective of preventing and quickly settling strikes and lockouts was unquestionably furthered by duplication of the "mediation" function. The Conciliation Service did successfully mediate many disputes. It acted as a sieve to catch and settle many disputes. The Board also settled many disputes without using its power of formal arbitration. The wartime labor experience indicates that limited duplication of function by two different agencies can be effective in achieving governmental purpose.

SETTLING WAGE AND FRINGE ISSUES

After receiving the findings of fact and recommendations of their tripartite panels or hearing officers, the regional war labor boards themselves decided the issues involved in a dispute. Either wage and fringe issues or non-wage and non-fringe issues might be involved. In making wage and fringe adjustments in dispute cases the boards had the same problems they had in making similar adjustments in voluntary cases. However, the National Board often had established a pattern for dispute cases before it had considered a pattern for voluntary cases. Also a regional board might not order a wage adjustment to the full extent that Board policy would have permitted it to approve in voluntary cases, because the adjustment might have been disputed.

SETTLING NON-WAGE ISSUES

In settling non-wage dispute issues,²⁴ regional boards had only the case-by-case decisions of the National Board to guide them. The National Board provided no generalized set of criteria of any type for

²⁴ The phrase "non-wage dispute issues" includes also the concept of "non-fringe dispute issues."

the settlement of issues such as union security, check-off, and grievance procedure. The knottiest dispute problem the regional boards faced was maintenance of membership. The maintenance of membership clause provided a type of union security. It gave union members fifteen days after the issuance of a directive order to resign or to agree to remain members of the union for the duration of the contract. The plant agreed to require, as a condition of employment, maintenance of union membership by those employees who were union members at the end of the 15 day escape period. In return the union would agree not to intimidate or coerce other persons to join during the life of the contract.²⁵ The clause tended to freeze union membership as it was at the end of the 15 day escape period. It tended to prevent gains in membership for unions and losses in status for management, insofar as certain companies regard growth in union membership as unhealthy. Although the National Board provided the regions with carefully worded maintenance of membership clauses to use,²⁶ it was never willing to lay down specific or general standards as to *when* the clauses were to be used. They were "to be used in all cases where the so-called standard form of maintenance of membership is directed."

Lack of guidance led several regional boards, or their public members, to adopt their own standards as to *when* maintenance of membership would be awarded.²⁷ Haphazard application of maintenance of membership had resulted in some regional employer members complaining that it had become a "standard and automatic procedure" in all dispute cases. Labor members complained when maintenance of membership was denied. As a result, the public members of the Sixth Regional War Labor Board in Chicago developed their own standards to determine whether maintenance of membership ought to be granted.²⁸ These criteria were developed by an analysis of National Board cases in which maintenance of membership had been allowed.²⁹

At a meeting with the National Board, the public members of the

²⁵ Maintenance of membership provisions went through several changes. They are traced in *Term. Report*, Chapter 7, p. 81.

²⁶ See Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Maintenance of Membership Formula," dated June 4, 1943; and Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Revised Maintenance of Membership Provision," dated November 29, 1943.

²⁷ See, for example, Robert K. Burns, RWLB VI, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Report on Operations of Sixth Regional War Labor Board for Week Ending October 8, 1943," Not dated; RWLB VIII, *Minutes*, December 14, 1943; and *Verb. Trans.*, February 18, 1944, pp. 983 ff., which contains a discussion between the members of the Seventh Regional Board and the National Board on the adopted criteria.

²⁸ Robert K. Burns, RWLB VI, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Report on Operations of Sixth Regional War Labor Board for Week Ending October 8, 1943," Not dated.

²⁹ *Verb. Trans.*, February 24, 1944, pp. 461 ff. The rest of the discussion concerning the criteria developed by the Sixth Regional War Labor Board is taken from *Verb. Trans.*, February 24, 1944, pp. 458 ff.

Chicago Board explained that they were developing "yardsticks" for their use. By applying these, they might exercise their discretion "uniformly and consistently." The National Board members explained that regional development of criteria was permissible, so long as those criteria produced results that conformed to NWLB policy. In several recent cases that the National Board had heard upon appeal, the regional criteria had led to decisions that were not within the scope of Board policy. One wonders, if regional boards could not find proper guides for use of their discretion through an analysis of National Board cases, how were they ever to be guided. The position of Chairman Davis typifies the NWLB opinion on the use of standards in dispute cases:

... One of the difficulties in attempting to define criteria in writing is that your subordinate agencies . . . tend to apply those criteria without discretion. What you need is the best judgment of a group of men who are capable of exercising discretion wisely in the light of the particular facts of the particular case. . . .

I think anybody who sat on the Board realizes that if we had attempted to do anything else [other than render case-by-case decisions] we would have come to grief, even more grief than we have come to, long ago, and, for that reason I personally have shied off, myself, from attempting to generalize on criteria of judgment in any of these cases, on any subject. You are open to accusation of inconsistency—it is not the worst of vices, certainly. I prefer to suffer that danger rather than the danger of bureaucratic action, and it is for that reason that this Board certainly tries—to give the fullest possible weight to whatever conclusions the Regional Board comes to in a particular case.³⁰

The Chicago Board was instructed to abandon the criteria and to begin using the "rule of common sense."³¹

The National War Labor Board never seriously considered developing criteria for regional guidance on dispute issues. The development of such criteria probably would have been mechanically possible. For example, it might have directed that "maintenance of membership is not to be granted by regional boards without findings or evidence that. . . . The factors listed are not intended to be exclusive of all others, but it has been the experience of the National Board that most cases hinge upon these considerations. Weight to be given to the various factors will vary according to the particular case and within the discretion of the regional boards." But it would not have been possible for the members of the National Board to agree to these criteria, because the Board was tripartitely composed and because it was never consistently unanimous in applying the maintenance of membership formula.

³⁰ *Ibid.*, pp. 475 f.

³¹ *Ibid.*, p. 479.

It might be suggested that the regular higher courts guide the lower courts in the judicial hierarchy through case-by-case decisions. However, the courts are not composed of partisan representatives who serve as judges only part-time. And regular courts usually not only have standards, but fairly well-defined standards of law, that they interpret and apply. The lower courts do apply the case-by-case decisions of the higher courts, but they are able to cope with varying factual situations because they apply the higher courts' case decisions in terms of the standards of a well-developed general common and statute law. The National War Labor Board attempted to guide the regional boards by its case decisions, but it did not always write opinions explaining those decisions. This system produced difficulties because the regional boards had no other standards by which to orient National Board action.

SUMMARY AND CONCLUSIONS

The position of the National War Labor Board was paradoxical. It provided no general standards to guide regional boards in handling non-wage issues in dispute cases, but it relied on its few case decisions to guide them. However, this method proved to be an unsuccessful technique, for under it the regional boards floundered. There were no statutory standards. There was no common law of labor relations. On the other hand, the adoption of inflexible and knowable standards for regional board guidance might have resulted in more labor disputes, rather than fewer. Guidance by case decisions meant a flexible policy. It allowed the Board to yield to the particular pressure of the moment—without succumbing to it, as had the National Defense Mediation Board. A position between these two extremes might have proved more successful. The adoption of non-wage criteria for regional consideration in dispute cases, accompanied by national review under an appeals system, would have allowed the political continuance of the Board's existence and would have provided some guidance for the regional boards.

The regional war labor boards were responsible for preventing strikes and lockouts both before and after they issued directive orders. The National Board provided no detailed instructions on how to obtain compliance, although national and regional techniques were discussed at conferences of regional chairmen and disputes directors. The National Board served only as an example to the regional boards and occasionally disapproved a regional board's action. However, the compliance policy of the regional boards was quite uniform.⁸²

⁸² See the summary in *Term. Report*, p. 591.

CHAPTER XI

DISPUTES:

REGIONAL PROCEDURES, PROCESSES, AND PROBLEMS

It takes guts to be a good panel representative on the labor, industry, or the public side. I think some of our panel members . . . lack the intellectual fortitude that the job requires. They do make record dissents on many issues. They feel another decision might reasonably be appropriate under the circumstances but they are protecting themselves solely for the record and leaving the burden of the job entirely to the Board.

. . . There must be somewhere in the procedure a feeling and a realization on the part of the panel members that they are at some point independent agents. Now they may listen to the point of view of the people for whom they speak and represent during the argument as well as they possibly can; at some point, if they realize they are wrong, they should be independent of them and act independently. Now combining those two elements is a tough job and it is a matter of our watching and training our panel people for each side.

—Saul Wallen, RWLB I, Regional Chairman, Verbatim Transcript, Anniversary Meeting, February 16, 1944, pp. 283f.

The methods by which the National War Labor Board acquired jurisdiction over voluntary and dispute cases were different. Voluntary wage stabilization cases were initially submitted to the regional war labor boards by the Wage and Hour Division field offices. Dispute cases were certified to the National Board in Washington by the Secretary of Labor. The New Case Committee of the National Board then determined what action the NWLB would take on each case. It could use a Board agent to make a preliminary investigation, return the case to the Conciliation Service, retain the case itself, or direct a regional board or an industrial commission to assume jurisdiction.

The National War Labor Board did not attempt to decentralize authority to handle dispute cases to the extent that it decentralized authority to handle voluntary cases. Regional boards were clearly instructed not to send a person to the strike scene, not to promise certification, and not to attempt the settlement of a strike until the National Board had given them jurisdiction over it.¹ Regional boards might get information on strikes and lockouts, but only by means of "telephone or telegraph." When they first heard of the possibility of a threatened strike or lockout, they were to notify the United States Conciliation Service and the National Board.

¹ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards. Memorandum, Subject: "Handling Strikes, Threatened Strikes and Lockouts," dated May 15, 1943.

REGIONAL BOARD ALTERNATIVES

When the National Board turned a dispute case over to a regional board, four general types of action were possible.² First, after studying the case the regional board might refer it back to the National Board with the recommendation that the NWLB should not have exercised jurisdiction. Second, the board might refer the case back to the parties with instructions that they privately negotiate in order to reduce the number of issues presented. After further discussion between the parties, the regional board could again exercise jurisdiction. Third, the regional board might refer the case back to the local office of the United States Conciliation Service, which would assist the parties in further negotiation. If the local office of the Conciliation Service failed to mediate the dispute, it would again refer the case to the regional board. And, lastly, the regional board might simply begin to process the case.

When the National Board assigned a case to a region, a regional new case committee (or occasionally the regional board itself) then acted. Some new case committees were permanently constituted. Others consisted of any tripartite group of board members.³ If, as a result of a dispute, a strike or lockout were still in progress, the Board policy was not to consider the case until the plant was again in operation. For this purpose, the regional new case committee would get preliminary information about the facts of the dispute from the regional representative of the Conciliation Service, from the National Board, and from other interested war agencies.

(1) TRIPARTITE PANELS

In keeping with their tripartite structure, regional boards utilized tripartite panels in the field more often than any other type of fact-finding method. The process of choosing acceptable persons for general panel lists was often difficult and time-consuming. Since the panels heard the cases in the city or area where the dispute was located, panel members were usually chosen from the local area. Travel money could thus be saved.⁴ In some few instances, political and public pressure was invoked to get preferred persons on the panel lists.

Labor and industry names for general panel lists were supplied by union internationals and federations and by the state manufacturers' associations.⁵ Public members for general panel lists were found by

² Theodore W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards and Commissions, Memorandum, Subject: "Authority of Regional War Labor Boards to Reject Jurisdiction of Dispute Cases," dated May 4, 1944.

³ RWLB VIII, *Minutes*, June 1, 1943.

⁴ R. Bernard, Acting Chief, Budget and Planning Office, to R. S. French, RWLB II, Director of Administrative Management, Memorandum, Subject: "Review of Budget Estimates, Third Quarter Fiscal Year 1945," dated November 25, 1944.

⁵ A good terse description of this procedure may be found in *Term. Report*, p. 674.

board members who tended to recommend personal friends and professional associates.

Each regional board determined its own method of choosing panel members. For guidance, the regional boards were informed by memorandum that in Washington the public Board members were primarily responsible for the selection of public panel members. Industry and labor Board members sometimes requested time to investigate a prospective public panel member's background, but they never objected to the "point of making a serious contest out of the case." The National Board public members tried not to appoint public panel members that were objected to by the other groups. The memorandum continued:

The National War Labor Board recommends to the Regional War Labor Boards that the principle of the primary responsibility of the public members for the selection of public panel representatives be recognized, believing that if the principle is recognized the same mutual forbearance, courtesy, and understanding which has characterized the relationships of the National War Labor Board members will prevail also among members of the Regional Boards.⁶

Unfortunately, the National Board had less difficulty in attaining unanimous consent to approve panel members than the regional boards. Although unanimity was the general regional rule, industry or labor regional board members sometimes arbitrarily discarded public members' recommendations.⁷ Because of the consistent difficulty of getting unanimous consent on enough public panel members, RWLB VIII in Dallas finally abandoned the requirement of unanimity and substituted the requirement of only a majority vote.⁸ All board members usually accepted without question the industry and labor nominations for panel lists.

Choosing persons to be panel representatives to serve on particular cases also proved to be an administrative problem. In some regions, specific assignments were made by the director of the disputes division or by an assignment officer within the disputes division. In making the assignment the members of the tripartite new case committee might be consulted.⁹ In important and strategic cases that might set precedents or that had received great publicity, consultation with the board's respective group members was required.¹⁰ In other regions the new case committee itself selected the members to serve on particular panels.¹¹ In Region I in Boston, the board's industry and labor offices chose their respective members to serve on particular panels.¹²

⁶ Quoted in *Verb. Trans.*, March 26, 1943, p. 1148.

⁷ As examples, see RWLB VIII, *Minutes*, April 3, 1945; and RWLB XI, *Minutes*, February 8, 1944.

⁸ RWLB VIII, *Minutes*, April 24, 1945.

⁹ See RWLB VIII, Regional Chairman, "Weekly Report," dated March 1, 1945.

¹⁰ See *Term. Report*, pp. 643 and 654.

¹¹ For examples, see Dixon, *op. cit.*, p. 158, and RWLB XII, *Minutes*, February 23, 1944.

¹² *Term. Report*, p. 603.

Public representatives on tripartite panels were usually those persons who were regularly employed by colleges and universities. Practicing attorneys and clergymen were about equal in number. Clergymen, in general, did not prove satisfactory. Some judges and some newspaper editors also served on panels.¹³ If seven regions be an adequate sample, the boards used almost twice as many individual industry representatives and twice as many individual labor representatives on panels as they did public members.¹⁴ This difference is accounted for because the boards utilized the specialized services of industry and labor representatives; whereas the public panel members, because of their professional backgrounds, were not as specialized. Indeed the boards justified the use of tripartite panels, rather than hearing officers, because panels provided a greater degree of specialization. Regional boards used more industry than public panel members because the industry representatives often misconceived the duties they were to perform when they agreed to serve on panels and hence served only once.¹⁵

At the panel hearing, the public representative was chairman. The participants to the dispute orally presented their respective arguments. If possible, the panel reduced the number of issues that the board was to decide; it encouraged further collective bargaining. Panel hearings often resulted in wasted time because of emotional displays. But they often served as a vehicle for getting the parties to agree on disputed issues.

Industry and labor panel members faced the same basic problem as their superiors on regional boards: were they to act in the interest of their respective group, or were they to follow their own independent judgments? Public board members and professional staff members held that panel members were not, at the panel hearing, to argue the case in behalf of the group they represented. Rather they were to listen to the arguments so that they might adequately summarize them in the panel report.¹⁶ The activities of the industry and labor representatives, however, indicated a different practice. Some disputants resented their respective panel representatives taking a detached point of view. One labor representative expressed his disagreement with the public members' conception of a partisan panel member's duty:

Of course, the primary function of the CIO Panel Member is to see that the panel Chairman understands the Union's position and arguments. We have had a few complaints from Unions which felt that the Labor Panel

¹³ See Table III, "Survey of Regional Board Panel Public Members by Profession," *Term. Report*, p. 586.

¹⁴ See Table I, "Statistical Summary of all Regional Board Panel Members for Entire Operational Period," *Term. Report*, p. 585. For the number used by individual boards, see pp. 622, 642, 654, 699, 673, 732, 745, and 767.

¹⁵ J. L. Zeerp, RWLB VIII, Industry Board Assistant, Memorandum, No Subject, dated October 15, 1945.

¹⁶ See the remarks of Saul Wallen in the headnote of this chapter. Also the discussion in RWLB I, "Summary, General Meeting, Panel Members," held February 18 and 19, 1944, p. 8.

Member expressed his personal preference on disputed issues rather than representing the Union's position. In this respect as well as others, the labor representative is not acting as an individual expressing his individual views on the disputed issues but is rather acting as a labor representative representing the union involved.¹⁷

To see that the industry panel members kept in line, the industry office of RWLB VIII in Dallas sent a letter to each company that had been a party to a panel hearing. It requested the company's opinion of the conduct of the industry and the public members of the panels.¹⁸

By contrast and exception, in one region some industry and labor panel members performed so efficiently, demonstrated their knowledge of Board policy so well, and made recommendations so impartially that the public members of the Board suggested making them *public* panel members. Those persons recommended accepted the suggestion, but the partisan members of the regional board strongly objected to losing their representatives. No action was taken.

After a hearing had been concluded, the panel report was an obstacle to overcome. Theoretically, the report reflected the combined thinking of all panel members. Actually, it usually reflected only the written opinion of the public member, even though it might be cleared with other panel members.¹⁹ Since the panel members seldom agreed, a report reflecting their collective opinion was a virtual impossibility. Any member of the panel could, if he chose, write a dissenting opinion. And this prerogative was often used. In some regions, a party to a dispute might, in effect, prepare his own dissenting opinion. For when his panel representative received the chairman's tentative report, the panel member would show it to the disputant whom he represented, hear his rebuttal, and then write a dissenting opinion.²⁰

(2) HEARING OFFICERS

New cases committees and assignment officers had the alternative of using panels or hearing officers. A hearing officer was a single person assigned by a regional board to hear the disputants and to report the facts and issues involved in the case. He might be a *per diem* representative like most public members of panels, or he might be a staff member of the disputes division. The National Board frowned upon using hearing officers, but some regional boards encouraged their

¹⁷ RWLB V, CIO, "Bulletin," February 19, 1945. For an expression of a similar view by the industry group, see Industry Members of the National War Labor Board, Second Region, to Industry Members of Tripartite Panels, "Suggestions for Industry Panel Members," not dated.

¹⁸ J. L. Zeerp, RWLB VIII, Industry Board Assistant, Memorandum, No Subject, dated October 15, 1945.

¹⁹ This procedure is analyzed in RWLB I, *Verb. Trans.*, Board Meeting, dated February 18, 1944.

²⁰ *Verb. Trans.*, Conference of Regional, Commission, and Panel Chairmen, January 21, 1945, pp. 13 ff.

use.²¹ Where encouragement was the rule, the regional board arranged to have them suggested by Conciliation Service officials. RWLB II in New York authorized its new case committee to assign hearing officers in all cases that involved fewer than one hundred employees, "whether or not a panel has been waived by the parties," as the National Board's rules of procedure required. Where the disputants objected, they could complain to the new case committee.²²

Most regional boards used hearing officers only for cases in which the disputed issues were few, in which there were no "hotly contested" issues, or in which highly technical issues were involved.²³ On rare occasions, staff members who were hired as hearing officers were used as chairmen of tripartite panels, after they were cleared by the regional boards.²⁴ RWLB II occasionally used wage analysts as hearing officers when the dispute involved technical wage issues that were the specialty of the particular analysts.²⁵

(3) JOINT BRIEFS AND BOARD HEARINGS

In addition to the use of panels and hearing officers, regional boards used two other methods to gain the facts and cull the issues in dispute cases. When a case involved only a very few issues (especially non-wage issues), a regional board might dispense with an oral hearing and ask each disputant to submit his case in writing. This method was known by the name "joint brief."²⁶ And some regional boards occasionally eliminated a pre-hearing entirely; a full board would hear the parties to the dispute argue their positions orally before it.²⁷ Neither of these two methods was used extensively.

HEARING METHODS COMPARED:

The extent to which regional boards used panels and hearing officers varied greatly. Variations in regional practice cannot be consistently attributed to caseload or areal and industrial differences. The San Francisco Regional Board, located in an area of great unionization, almost never used hearing officers; but the New York Regional Board,

²¹ See RWLB V, *Minutes*, February 7, 1945, and R. K. Burns, RWLB VI, Chairman, to L. K. Garrison, Executive Director, "Operations in Region VI for the Week Ending July 31, 1943," No date.

²² RWLB II, *Minutes*, December 1, 1943.

²³ See RWLB's III use of hearing officers in *Term. Report*, p. 635.

²⁴ RWLB X, Regional Chairman, "Weekly Report," November 30, 1944.

²⁵ See *Term. Report*, p. 616.

²⁶ T. L. Norton, RWLB II, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Bi-Weekly Report—April 1-April 15," dated April 15, 1944; and T. W. Kheel, Executive Director, to Chairmen, RWLBs, Memorandum, Subject: "Cases Involving Small Numbers of Employees," dated April 14, 1944.

²⁷ John Hogan, RWLB I, Associate Disputes Director, "Report on Closed Dispute Cases Heard by the Regional Board directly on the Merits, March 31—June 30, 1945," dated July 20, 1945; and M. T. Van Hecke, RWLB IV, Regional Chairman, to T. W. Kheel, Memorandum, Subject: "Report for Period July 1 to 31, 1945," dated July 31, 1945.

also in an area of great unionization, used hearing officers for 40 percent of its cases.²⁸ The Seattle Regional Board heard 38 percent of its cases through hearing officers; whereas the Denver Regional Board used hearing officers in only 11 percent.²⁹

The National Board allowed the regional boards to decide whether tripartite panels or hearing officers were to be used. The arguments for use of hearing officers relied on considerations of internal administrative relations and speed of processing cases. Those opposed to hearing officers argued that the tripartite principle at the top level of the hierarchy should be extended throughout the hierarchy. They argued that the use of tripartite panels was conducive to good public relations. The NWLB's Executive Director expressed a preference for the use of hearing officers, especially hearing officers who were staff members.³⁰ In the Second Region, there was "an overwhelming demand for single hearing officers and most of the parties stated their preference for the staff members, rather than *per diem* panel members."³¹ By contrast, other regional boards were actively hostile to the use of hearing officers.³² And the general consensus of regional chairmen opposed a rule that would impose hearing officers against the wishes of the disputants. At a conference of regional chairmen at which the issue was discussed, a group recommended:

... against adoption of the proposed rule permitting the Regional Boards and Commissions to order the use of a hearing officer, even in the absence of an agreement of the parties. The general view was that the Regional Boards and Commissions have been having little difficulty in getting the parties to agree to single hearing officers in appropriate cases and that any advantage which might be gained from the proposed rule in an occasional case would be outweighed by the disadvantages from the public relations point of view.³³

(1) Cost

In terms of cost, hearing officers proved much cheaper than panels.³⁴ RWLB XII in Seattle figured that a case heard by a hearing officer cost \$55.12 *per diem*; whereas a case heard by a tripartite panel cost \$112.34 *per diem*.³⁵

²⁸ *Term. Report*, pp. 740 and 614.

²⁹ *Ibid.*, pp. 762 and 614.

³⁰ See *Verb. Trans.*, Meeting of Regional Disputes Directors, Chicago, March 4 and 5, 1944, pp. 60 f.

³¹ J. W. Greenwood, Jr., RWLB III, Director of Administrative Management, to L. K. Garrison, Executive Director, telegram, dated November 3, 1943.

³² For an example of this attitude, see H. Buckman, RWLB V, Industry Assistant, to Members of Industry Section, RWLB V, Memorandum, dated April 10, 1944; H. Buckman, to Members of Industry Section, RWLB V, Memorandum, dated September 11, 1944; and RWLB VIII, *Minutes*, January 11, 1944.

³³ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, p. 53.

³⁴ T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Memorandum, Subject: "Report for Week Ending November 12, 1943." Not dated.

³⁵ *Term. Report*, p. 762.

(2) TIME

It was the general experience of the regional boards that the use of hearing officers instead of panels saved time.³⁶ RWLB II in New York reported that cases assigned to panels took 100 days from the receipt of the case until the panel report was received; whereas a hearing officer would file a report within 80 days. By contrast, if the case were heard by joint brief, the case would be ready for hearing by the board within 40 to 50 days.³⁷ RWLB XII in Seattle reported that the time between receipt of a dispute case file and the time of a report by either a panel or a hearing officer was 45 days on the average.³⁸ Use of hearing officers saved time, in part, because they usually heard simpler cases involving fewer issues than those heard by panels, and because panels had little technical and secretarial assistance.

(3) QUALITY

Not only were the reports of staff hearing officers cheaper and more time-saving than those of panels, but also they were generally of better quality—especially on cases that fell within established Board policy, as opposed to cases on which policy had not yet been fully developed.³⁹ There are several reasons for the unsatisfactory character of panel reports. First, many public panel members were not able to perform effectively because of the nature of the panel procedure. Men with dignity and standing within their community were not pleased with the conduct of their fellow panel members or the disputants during the hearing procedure. This lack of decorum resulted in the resignation of many of the most capable public panel members. Men who serve as public panel members should be professionals in labor relations, "as distinct from men of good will with a dilettante's interest in labor relations."⁴⁰

Second, panel reports were less likely to fall within the scope of Board policy. The reports were often the results of the panels' mediation. When the disputants informally approached agreement upon any issues in dispute, the panel tended to adopt what seemed to be the informal agreement as its own recommendation. If this procedure had been accepted, any disputants could have circumvented Board policy simply by agreeing to do so. Panel reports also tended to be compromises between the positions of two or more of the panel members, as opposed to a clearcut determination or a recommendation under Board policy. The public chairman would have to compromise his own views

³⁶ Compare *Term. Report*, pp. 600, 614, 649, 692, and 755; and T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report for Week Ending November 12, 1943," Not dated.

³⁷ *Term. Report*, p. 614.

³⁸ *Term. Report*, p. 762.

³⁹ See the comments of the regional chairmen in *Term. Report*, pp. 649, 692, 727, 755, and 762; and T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report for Week Ending November 12, 1943," Not dated.

⁴⁰ *Term. Report*, p. 624.

in order to get the industry or labor member to accept the position and the recommendation. In this process Board policy would often be forgotten.

Third, panel members were generally neither well enough trained nor well enough acquainted with Board policy to make acceptable recommendations within the framework of that policy. Panel reports were especially weak on wage issues.⁴¹ For a person to have been an accomplished panel chairman, he would also have to have been qualified and trained as a wage rate analyst. And being an accomplished wage rate analyst took weeks of initial orientation, plus recurrent training to keep up with Board policy. Although the regional boards developed several methods of training panel members, panels were weak because of lack of training and because of the *per diem* character of panel service. Several regional boards adopted a policy of bringing the panel members into the regional board office for a short period. There they would watch the board itself at work and receive instruction from the various staff divisions.⁴² Although the method had merit, the periods of service with the regional boards were usually so short that they were not greatly effective.

Another method used to train panel members was to call them into conference. The different regions called such meetings "conferences," "clinics," or "schools." Only the public panel chairmen participated in most conferences. Budget considerations usually prevented panel conferences from being tripartite. The industry and labor panel members occasionally had their expenses paid by the organizations they represented. When the public panel members were brought to the headquarters city for a conference, the industry and labor panel members who lived within the immediate vicinity were invited to attend.⁴³ In regions covering large geographic areas, schools for public panel members were held in several centrally located cities. The most effective type of clinic met regularly each week. RWLB VI in Chicago sponsored such a clinic under the direction of the disputes director, who in turn got participation from public panel members by making them responsible for part of the program. The weekly clinic was worth while only when the headquarters city was in both a metropolitan area and in an area in which disputes arose rather frequently. The regional

⁴¹ See the remarks of Samuel Edes, RWLB VI, Disputes Division, "Clinic of Panel Chairmen," November 24, 1943.

⁴² RWLB II, *Minutes*, February 23, 1945; F. H. Bullen, RWLB V, Regional Chairman, Memorandum, Subject: "Report on Regional Board Activities for the Period March 1st-March 15th," dated March 15, 1944; H. Buckman, RWLB V, Industry Assistant, to Members of Industry Section, RWLB V, Memorandum, dated February 28, 1944; J. A. Hoskins, Chairman, RWLB VII, Regional Chairman, Memorandum, Subject: "Report of Regional Board VII for Week Ending July 10, 1943," dated July 10, 1943.

⁴³ Frank McCallister, RWLB IV, Executive Assistant to CIO Members, "WLB Headlines," dated April 19, 1945; and E. C. King, RWLB IX, Vice-Chairman, to Lloyd Garrison, Executive Director, Memorandum, Subject: "Summary of Board Activities for the Week Ending April 30, 1943," dated May 1, 1943.

panel members representing the CIO, to a greater extent than those representing the AFL or industry, were also trained by state-wide or region-wide conferences financed by the group they represented.⁴⁴

Regional boards attempted to keep panel members abreast of NWLB policy through correspondence. Early in the days of decentralization, regional board panel members were on the mailing list of the national office, but they were cut off from this source of policies and procedures in September of 1943. Regional boards objected to this change.⁴⁵ Public panel members were kept partially informed of board policy through mimeographed reports or case summaries. And the industry and labor panel members were informed—in partisan fashion—by the regional board group that they represented.⁴⁶ In addition, each region compiled and issued to its panel members a different, though similar, type of manual.⁴⁷ These manuals were not different enough to have justified their separate preparation.⁴⁸

A fourth factor leading to the general superiority of hearing officer reports to those of panels was that panels usually received no assistance from regional board staff personnel—no assistance prior to the hearing, none during the hearing, and none with the preparation of the report. RWLB III in Philadelphia experimented successfully with a research unit within the disputes division. This unit reviewed pre-hearing briefs and mailed them to the panel members. It assembled comparable wage rate data for the use of the panel. And it compiled a check list of the minimum information the panel should have before it could write an adequate report.⁴⁹ In difficult cases, the research unit also sent a member of its staff to work as a technical assistant to the panels. RWLB VIII in Dallas used a similar system to advantage.⁵⁰ Lack of secretarial assistance and failure of panel members to be on hand for the hearing were other panel difficulties.⁵¹ By contrast, hearing officers,

⁴⁴ For examples, see RWLB III, Regional Chairman, "Weekly Report," dated April 16, 1943; and Frank McCallister, RWLB IV, Executive Assistant to CIO Members, "WLB Headlines," Not dated.

⁴⁵ See RWLB III, Regional Chairman, "Weekly Report," dated September 17, 1943.

⁴⁶ T. L. Norton, RWLB II, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report of Activities for Month of April," April 30, 1945; and M. T. Van Hecke, RWLB IV, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report for Three Weeks Period Ending April 15, 1944," dated April 15, 1944.

⁴⁷ For divergent examples see RWLB II, "Manual of Instructions for Panel Members and Hearing Officers," dated November 1, 1943; RWLB IV, "Hearings Guide for Disputes Cases," November 1943; and RWLB VII, "Handbook for Tripartite Members and Hearing Officers," 1944.

⁴⁸ T. W. Kheel, Executive Director, to All Regional Chairmen, Telegram, dated March 31, 1944.

⁴⁹ Sylvester Garrett, RWLB III, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report of Regional Board III Activities for Month of November, 1944," dated November 30, 1944. See also RWLB VI, "Clinic of Panel Chairmen," dated November 17, 1943.

⁵⁰ RWLB VIII, Regional Chairman, "Weekly Report," dated May 8, 1943.

⁵¹ RWLB V, *Minutes*, June 29, 1943.

in preparation for the hearing, could avail themselves of the advice of wage rate specialists in an adjoining office. Staff hearing officers were thoroughly familiar with Board policy and knew the information necessary to dispose of a case effectively. Hearing officers could return to their offices and devote full-time to writing a report with the aid of the stenographic and mechanical services of the office.

(4) SUBSTANTIVE ADVANTAGES

The advantages of tripartite panels over hearing officers are, in contradistinction, substantive rather than procedural or mechanical. Advocates of tripartite panels would argue that in the long run the panels were the more efficient. The panel members were able more effectively to encourage the parties to bargain collectively. The results achieved by collective bargaining were longer lasting and reduced the number of issues that the boards finally had to settle. Panels offered a psychological advantage. The parties were said to "feel better" about their cases when they had a representative on the panel. It was also maintained that the use of tripartite hearing panels was a necessary step to encourage recalcitrant employers and unions to comply with Board orders. Tripartite panels laid the groundwork for further tripartite action.

PREPARING DISPUTE CASE ANALYSES

When a regional office received a hearing officer or panel report, the disputes division analyzed it, summarized it, and presented it to the board. The specialized job was usually performed by a review and analysis section of the disputes division.

Analysis of wage issues in dispute cases provoked the greatest problem. Usually wage issues were analyzed by the wage stabilization division. However, some boards set up wage analysis units within the disputes division.⁵² The analysis of wage issues within the disputes division sometimes resulted in less effective case analyses.⁵³ Since the disputes division was responsible ultimately for all dispute cases, the lack of clarity between the operating responsibilities of the disputes division and the wage stabilization division caused squabbles and jealousies. On the one hand the wage stabilization directors maintained that the disputes divisions were too liberal in their recommendations on wage issues. On the other hand disputes directors complained that "They seem to get an idea—most wage stabilization directors—that

⁵² See R. K. Burns, RWLB VI, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Operations in Region VI for the Week Ending July 24, 1943," not dated; and RWLB IV, Regional Chairman, "Weekly Report," dated March 11, 1944; and RWLB II, Regional Chairman, "Weekly Report," dated October 16, 1943.

⁵³ T. W. Kheel, Executive Director, to T. L. Norton, RWLB II, Regional Chairman, Letter, dated December 5, 1944.

every wage case is their baby. That, of course, isn't true."⁵⁴ Experience proved that from the point of consistent application of wage stabilization policy, wage issues in dispute cases were better handled by the wage stabilization division. Analysis by the wage stabilization director was more likely to provide a balanced wage structure throughout the region. However, the slavish following of the recommendation of the wage stabilization director usually allowed the disputes division or the regional board less freedom of action to balance one issue against another in the process of collective bargaining.

BOARD-LEVEL ACTION

When a case had been analyzed by the disputes division it was ready for presentation to the regional board. Some boards required that cases be screened through tripartite committees of the board, but most boards eventually eliminated this step as a duplication of procedure.⁵⁵ Dispute cases were usually presented by a board member⁵⁶ or by a staff member of the disputes division.⁵⁷ At one time some boards allowed staff members of the disputes division to present the non-wage issues in dispute cases and staff members of the wage stabilization division to present the wage issues. This dual responsibility resulted in personnel friction, and the practice was stopped by an NWLB resolution:

The NWLB directs that disputes should not be presented to the Board by any staff member other than the Director of the Disputes Division or some member of his staff for whose performance he is to be held responsible.⁵⁸

Once a board decided a case, the directive order embodying its findings and conclusions was sometimes written by a disputes analyst, sometimes by an assistant to a board member, and sometimes by a board member himself.⁵⁹

RECONSIDERATION

With each directive order issued by a regional board went a copy of the NWLB's "Rules of Appeals," which explained the Board's re-

⁵⁴ *Verb. Trans.*, Meeting of Regional Disputes Directors, Chicago, March 4 and 5, 1944, p. 301.

⁵⁵ L. M. Gill, RWLB V, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Weekly Report on Regional Board Activities," dated October 25, 1943.

⁵⁶ RWLB XII, *Minutes*, June 8, 1943; and *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, p. 153.

⁵⁷ T. L. Norton, RWLB II, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report of Activities for the Month of June," dated June 30, 1945; and RWLB V, Regional Chairman, "Weekly Report," dated October 26, 1943.

⁵⁸ *Verb. Trans.*, December 28, 1942, p. 169. See also *Verb. Trans.*, Meeting of Disputes Directors, Chicago, March 4 and 5, 1944, p. 306.

⁵⁹ See *Verb. Trans.*, Meeting of Regional Disputes Directors, Chicago, March 4 and 5, 1944, pp. 303 f.

consideration and appeals procedure.⁶⁰ Under the same conditions by which applicants might apply for reconsideration of a board's ruling in a voluntary case, the disputants might apply for reconsideration of a board's directive order in a dispute case. Regional boards were much more inclined to change their decisions upon reconsideration of their wage decisions in voluntary cases than they were to change their decisions in dispute cases. In periods roughly comparable, regional boards upheld their directive orders in 77 percent of the dispute cases they reconsidered, but upheld their rulings in only 48 percent of the voluntary cases they reconsidered. Directive orders were reversed in 5 percent of dispute cases reconsidered; rulings were reversed in 18 percent of voluntary cases reconsidered. Directive orders were modified in 18 percent of the cases; rulings were modified in 34 percent of the cases.⁶¹

SPEED IN PROCESSING

Analysis of dispute cases took considerably longer than analysis of voluntary cases.⁶² In the summer of 1943 the average processing time for a dispute case from the time it was received by a regional board until the time a directive order was issued was approximately four and a half months. By February, 1944, optimum speed had been reached. At this time, the average case took 70 to 90 days to process.⁶³

Table 7 indicates that after February 1944 the regional boards never succeeded in speeding their processing of cases or in appreciably reducing their backlogs. Had it not been for dispute case "drives," the boards' backlogs would probably have been even greater.⁶⁴ The NWLB, like the tripartite Railway Labor Board, was vigorously criticized for its delay in processing dispute cases.⁶⁵

COMPLIANCE

Obtaining compliance with board orders was a formidable task. For the National War Labor Board, like many other previous labor boards, had no formal power to enforce its decisions.⁶⁶ But to effect the directions given in its orders, it might, after mid-August of 1943⁶⁷, refer minor cases to the Director of Economic Stabilization who could

⁶⁰ Lloyd Garrison, Executive Director, to Chairman, RWLBs, Memorandum, Subject: "Instructions Concerning New Rules on Appeals," dated December 1, 1943.

⁶¹ See Table 2, "Petitions for reconsideration of decisions in dispute cases by Regional Boards, Commissions and Panels, by nature of disposition," covering September 1, 1944-August 18, 1945, *Term. Report*, p. 480; and Table 4 in Chapter IX.

⁶² See Tables 5 and 6 in Chapter IX.

⁶³ RWLB I, *Verb. Trans.*, Anniversary Meeting, February 16, 1944, p. 265; and G. B. Noble, RWLB XII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Annual Report," dated March 27, 1944.

⁶⁴ RWLB XII, *Minutes*, dated December 27, 1944.

⁶⁵ See H. D. Wolf, *op. cit.*, pp. 371 ff.

⁶⁶ See H. D. Wolf, *op. cit.*, p. 94; L. L. Lorwin and A. Wubnig, *op. cit.*, p. 132; and H. G. Brainard, *op. cit.*, p. 190.

⁶⁷ See the War Labor Disputes Act, 57 U. S. Statutes 163.

TABLE 7*

PERCENTAGE OF DISPUTE CASES PENDING BEFORE REGIONAL BOARDS
ON VARIOUS DATES, BY DATES IN WHICH CASES WERE FILED

DISPUTE CASES:

Date	Over-age†	Between 10-12 mos.	Between 7-9 mos.	Between 4-6 mos.	Between 0-3 mos.
December 29, 1944....	1.9%	4.1%	11.0%	33.1%	49.9%
March 30, 1945.....	1.9	3.8	13.1	28.4	52.8
June 29, 1945.....	2.3	5.2	11.3	24.4	56.8

RECONSIDERATION OF DISPUTE CASES:

Date	Over-age†	Between 10-12 mos.	Between 7-9 mos.	Between 4-6 mos.	Between 0-3 mos.
December 29, 1944....	2.3%	1.7%	5.0%	14.7%	76.3%
March 30, 1945.....	0.3	0.6	9.0	7.3	90.9
June 29, 1945.....	0.8	1.1	2.6	8.7	86.8

*Calculated from NWLB, Operating Statistics Section, Table 4, "Age Status of Pending Cases as of December 29, 1944," Dispute Cases, dated January 12, 1945; Table 4, "Age Status of Pending Cases as of March 30, 1945," Dispute Cases, dated April 10, 1945; Table 4, "Age Status of Pending Cases as of June 29, 1945," Dispute Cases, dated August 2, 1945; Table 5, "Age Status of Pending Cases as of December 29, 1944," Dispute Reconsiderations, dated January 12, 1945; Table 5, "Age Status of Pending Cases as of March 30, 1945," Dispute Reconsiderations, dated April 10, 1945; and Table 5, "Age Status of Pending Cases as of June 29, 1945," Dispute Reconsiderations, dated August 2, 1945. All tables are figured "by month during which case was originally filed" with the regional boards.

†"Over-age" dispute cases were those which had been filed more than one year without a directive order having been issued.

invoke economic sanctions against non-complying unions and employers.⁶⁸ The Director might order other governmental agencies to withdraw "from a non-complying employer any priorities, benefits or privileges extended... by executive action of the Government." He might direct any governmental agency operating a plant that the President had seized under the authority of the War Labor Disputes Act to request the NWLB to withdraw any benefits it might have given to a non-complying labor union. And he might direct the War Manpower Commission to use its power of "draft deferments or employment privileges" to get the compliance of individuals.

During its existence the National War Labor Board and its agents closed 17,650 dispute cases.⁶⁹ Only 46 cases, amounting to three ten-thousandths of one percent of the disputes closed by the Board, did it refer to the President.⁷⁰ In addition, approximately 90 cases were referred to the Director of Economic Stabilization.⁷¹ These statistics do not mean that the NWLB secured compliance in all other cases. No figures are available to indicate the number of employers and unions that were in non-compliance when the life of the Board ended. However, in Regions I, IV, and IX alone, 54 non-compliance cases were

⁶⁸ 3 CFR, 1943 Supp., 9370, dated August 16, 1943; and Franklin D. Roosevelt to William H. Davis, Chairman, NWLB, Letter, dated August 16, 1943.

⁶⁹ Term. Report, p. 415.

⁷⁰ Term. Report, pp. 416, 420.

⁷¹ Term. Report, II, pp. 728 f.

pending when the National Wage Stabilization Board superseded the NWLB.⁷²

Within the regions the disputes divisions were in partial charge of effecting compliance with the boards' directive orders. However, the regional board members themselves thought this work so important that the disputes divisions did not bear the main brunt of the burden. Unlike the procedures for handling voluntary cases, dispute cases, and enforcement cases, there were no established procedures for attaining compliance.

To achieve compliance through persuasion, the regional boards' tripartite structure was most valuable. In voting for compliance the tripartite group was most closely united. Even though some board members might have voted against the issuance of a directive order, they usually voted for compliance with it. Where a board member was not willing to vote for compliance he was sometimes asked to give up his membership.⁷³ Occasionally regional boards would have split votes on compliance issues, but this was exceedingly rare.⁷⁴

Regional boards used a variety of methods to achieve compliance with directive orders and to break up strikes initiated as a result of non-compliance. Staff members corresponded with the employer and the union leaders. Industry and labor board members sought individual conferences with the disputant whom they represented, and these "brotherly" talks would often lead to compliance. The boards sought the cooperation, and usually got it, of officials of international unions in order to end wildcat strikes. Board members spoke publicly at union meetings. One regional board refused to process a company's Form 10 because the company was in non-compliance with a directive order. But the National Board rejected this method for regional board use.⁷⁵ To get the parties back to work, some boards utilized the services of panel members located in the geographical area where the plant was located.⁷⁶

When informal methods failed, a regional board might hold a hearing whereby the offending party would be asked to show cause why he should not comply with the order of the board. For this purpose, a board, under the authority of the War Labor Disputes Act, might utilize subpoenas to compel the attendance of recalcitrant parties. However, the National Board reserved to itself the power to grant prior approval to a regional board each time the subpoena power was used.

⁷² See *Term. Report*, pp. 593 and 651.

⁷³ *Verb. Trans.*, February 24, 1944, p. 456.

⁷⁴ *Verb. Trans.*, December 22, 1943, p. 274.

⁷⁵ See RWLB VII, *Minutes*, September 13, 1944. Interestingly enough, the National Board itself ordered one of its commissions to use this method of coercion against the International Typographical Union in July of 1945. See *Term. Report*, p. 419.

⁷⁶ T. F. Neblett, RWLB X, Regional Chairman, to L. K. Garrison, Executive Director, Memorandum, Subject: "Report for Week Ending July 31." Not dated, but probably for the year 1943.

It was seldom necessary to use subpoenas, for the dormant power usually encouraged voluntary attendance. Hearings were held in public and they were given wide publicity. For public opinion was an aid in effecting compliance. Usually, at some time during the hearing, the group would adjourn to allow the industry and labor board members to "go to work on" the disputants whom they represented.⁷⁷ In the event that the show-cause hearing did not achieve compliance, regional boards then usually referred the case to the National Board for its action.

SUMMARY AND CONCLUSION

The National Board allowed its regional boards great freedom to develop procedures and processes for handling dispute and compliance cases. This policy proved wise. For both industry and labor were more "sensitive" about dispute cases than they were about voluntary wage stabilization cases. Regional freedom to use panels or hearing officers allowed the boards to relieve the irritation rather than aggravate it.

Although the use of tripartite panels rather than single hearing officers was time-consuming and costly, it is possible that—totally considered—panels were more effective. Panels were successful in reducing the issues that finally had to be decided and in encouraging the parties to reach a voluntary agreement. However, adequate and continuous training of panel members would have increased their usefulness.

Standard techniques for achieving compliance were impossible. Since obtaining compliance depended so much upon the reaction of one human being to another human being, the National Board was wise in not attempting to canalize regional methods.

But the regional war labor boards had procedural problems beyond those encountered in the work of the staff divisions and in their relations with the boards' clientele. Areal differences were little cause for the difficulties the regions encountered at the tripartite board tables.

⁷⁷ NWLB, *Verb. Trans.*, Meeting of Regional Disputes Directors, Chicago, March 4 and 5, 1944, p. 211.

CHAPTER XII

TACTICS AT THE TRIPARTITE TABLE

... If one were to become firmly habituated to the conversational procedure followed in the Board sessions, he might find himself somewhat lacking in capacity to win friends and influence people in all but the most rugged social circles. . . .

—Dexter Keezer, Public Member, NWLB, to The Chairman, NWLB, Memorandum, No Subject, dated March 24, 1944.

In particular instances both industry and labor might vote inconsistently, and in a fashion seemingly inexplicable to their constituents because of a tripartite characteristic known as the "box." The "box" occurred when either the labor or industry members had to join with the public members and vote against their principles, or against their constituents' wishes, in order to prevent the public members from going to an opposite extreme which would be even more distasteful.

—Robert G. Dixon, "Tripartitism in the National War Labor Board," *Industrial and Labor Relations Review*, II (April, 1949), pp. 382 f.

Multi-headed agencies are frequently criticized. John M. Pfiffner says of boards:

Action is slowed down, and proper decisions are delayed or vitiated by compromise. . . . Plural leadership makes for inaction, dissension, lack of teamwork, and lack of control in general.¹

If the ordinary board is charged with these criticisms, then the tripartite board stands in double jeopardy.

In performing its collective duties a board encounters administrative problems not faced by a single-headed agency. The act of people working together is itself time-consuming. But when the members of a board are deliberately chosen because they have different economic backgrounds, the making of collective decisions becomes even more time-consuming.

At the working table, the activities of the National Board and of the regional boards were similar. Discussions at the National Board table were usually on a higher plane than those at the regional tables, because the National Board members realized that they had the final responsibility for the program. There was more frivolity in the regions, probably because the men participating in regional board activity had been acquainted prior to their NWLB experience.

No two regional war labor boards performed their respective collective duties in identical fashion. Tactics at the tripartite tables were, however, similar. But no one regional board table had all the problems discussed in this chapter.

¹John M. Pfiffner, *Public Administration* (Revised Edition; New York: The Ronald Press Company, 1946), p. 106.

AGENDA

A regional board's agenda was prepared in the office of the board, usually by the executive or recording secretary or by the assistant to the chairman. The order of cases on the agenda followed the order in which a staff division completed its analyses. Some boards arranged to handle dispute, voluntary, and enforcement cases on different days. Other boards designated certain days or weeks in which to handle cases arising from specified geographical areas.

Because of the rotating character of board membership, many policy questions not on the agenda were customarily raised. As a result some boards restricted their discussions to cases and questions on the prepared agenda and adopted fairly strict rules for the presentation of questions in which one member was particularly interested.² In some regions the chairman had the prerogative of changing the agenda for reasons of urgency.³ Since board members were often "interested" in particular cases coming before the board, "jockeying" resulted. Jockeying was the attempt to have a case, in which a board member was interested, come up on the agenda at a time either when he was present or when the public composition of the board would be best for the favorable disposition of the case.⁴ Jockeying resulted in the preparation of agenda on which only cases in certain designated areas or in certain designated industries would arise on the same day. Because of the different industrial pattern in southern and northern California, and because of board members representing the two sections, the San Francisco Board handled cases from the two areas on separate days, with different members sitting. By unanimous vote any regional board could, and often did, change its agenda without notice. A unanimous vote in such instances was fairly easy to obtain, because the other board members would want cooperation when they, in turn, had an "urgent" case.

STARTING BOARD MEETINGS

Tripartite boards caused much delay. The process of gathering the members together to begin a meeting was unnecessarily time-consuming. It was a rarity for a board meeting to start at the agreed time. Each board group seemed to think it lost prestige if it appeared on time and had to wait for the arrival of one of the other groups. As a result, it became almost standard practice not to arrive until after the other members had arrived. Since board deliberations could not begin until there was a tripartite quorum of six, meetings were often delayed by

² For an example of such a rule, see RWLB I, *Minutes*, January 23, 1945, and *Minutes*, August 4, 1944.

³ As an example, see RWLB IX, *Minutes*, April 1, 1944.

⁴ Robert G. Dixon, Jr., "The Tripartite and Compliance Aspects of the National War Labor Board with Special Reference to Region II, New York" (Unpublished Ph. D. dissertation, Department of Political Science, Syracuse University, 1947), p. 143.

members who were late because they were purportedly "held up at their offices."⁵

TECHNIQUES OF THE CHAIR

Once the meetings had started, procedure at the board table was not conducive to speedy and accurate results. The techniques of a chairman greatly affected the speed and success of board operations. In Washington, Chairman Davis was in favor of informality at the Board table. In discussing the results of a public hearing procedure he once remarked,

... My presiding is loose. I think it is quite loose. I don't like to make these things too formal. I think we get at the facts often by roundabout methods; it is all right.⁶

By way of contrast, when Wayne Morse occupied the chair, the proceedings were conducted with rather strict formality. In discussions of general policy and delegation, the National Board usually met with all twelve members in attendance. Davis allowed free and unguided discussion. He tried to achieve the consensus of the Board without the formality of formal resolutions. When he polled the members, he seldom stated the question. Davis apparently assumed that the Board members had achieved a meeting of minds and knew on what they were voting.

EFFECTING BOARD DECISIONS

The Executive Director took notes and used the verbatim transcripts of Board discussion to figure out what had been decided. This system caused considerable delay because the discussions could not be transcribed overnight. At the regional level, the boards did not have transcripts of their regular sessions, but since they were primarily occupied with actual case decisions and since their adoption of general policy was more specific in character, formal resolutions were used more than at the national level.

Informal procedure at the board table led to many unnecessary administrative problems. Quite often it was impossible to tell what the National Board had decided, even when the entire discussion was on the record.⁷ Board members themselves had often achieved no meeting of minds. As a result, when the policy was summarized by the Executive Director for regional distribution, the members would object and state that they had not voted for such a policy. The members' understanding of what they were voting on had been different. Because of the indecisiveness of Board action, the members often came away from

⁵ *Verb. Trans.*, Conference with Regional Chairmen and Commission Chairmen, July 15, 1944, p. 136.

⁶ *Verb. Trans.*, Division A, June 27, 1944, p. A-88.

⁷ As an example of such a policy discussion concerning vacations and night shift differentials, see *Verb. Trans.*, April 28 and April 30, 1944.

the table with different ideas on fundamental and important questions. After the Board had discussed what instructions to give the regions under Executive Order 9328, it called the regional chairmen to Washington to discuss their problems further. At this meeting "it appears that the Boards have received somewhat conflicting advice from the Chairman and Vice-Chairman of the Board.⁸ The result was that the regional chairmen were "using their own judgments."

Even when the National Board did act formally, its orders were not always carried out. Wayne Morse, who consistently attempted to improve NWLB administration, remarked, "We pass resolutions and pass motions and we say Roger is to do this and the Chairman is to do that, and it is all taken down but it is never followed through."⁹ Regional boards were hampered by the same problems. Although a board might formally resolve to follow a certain procedure, it would not necessarily abide by its resolution. And at the regional level, informality and the specific nature of the boards' duties resulted in the adoption of decisions that were not clear and that were incomplete because the boards had not acted on a number of issues. Special committees were necessary to remedy the deficiencies of an original board order or ruling.¹⁰ The nature of the boards resulted in the fact that no one member could speak with authority for his board or to its staff.¹¹ The activity of the chairman was always subject to the vote of a quorum of the board.

GETTING THE FLOOR

Discussion at the board table was frequently chaotic. The particular subject under discussion might change as rapidly as the members succeeded in getting the floor. Recognition from the chair was seldom a prerequisite to speaking. As one member of the National Board succinctly and satirically expressed the procedure in a memorandum to the chairman,

The standard technique employed in getting a say at a Board session is to start right in talking along with the person who has the floor, then to observe closely when he slows down for breath, and at that point put on such a burst of speed or noise or both that he is swept off the floor—to await his chance to get back into the conversation, usually by using the same technique. I have noted, of course, that some members of the Board manage to take the floor simply by bellowing down all rivals and that a few artists employing magnificent timing, manage to cut in with rapier-like thrusts.¹²

⁸ Lloyd Garrison, Executive Director, *Verb. Trans.*, April 19, 1943, p. 17.

⁹ *Verb. Trans.*, December 4, 1942, p. 599.

¹⁰ For an example of the work of such a committee, see RWLB VII, *Minutes*, October 19, 1943.

¹¹ H. L. Enarson to David H. Stowe, Bureau of the Budget, Memorandum, Subject: "Dr. Steelman's Views on the War Labor Board, as developed in the hearing on the Conciliation Service Budget, December 29, 1942," dated December 30, 1942.

¹² Dexter Keezer, Public Member, NWLB, to The Chairman, NWLB, Memorandum, No subject, dated March 24, 1944.

While such tactics were applied mostly in discussions of the most controversial cases and while they tended to grow less in intensity as the NWLB matured, they were constantly used by members of the regional boards as well as by members of the National Board.

STATUS AND INDIVIDUALITY

Status and individuality were responsible for many difficulties at board tables. Delays in decision-making and regional bewilderment often resulted. After the appointment of the alternate public members to the National Board, the original members were referred to as "Team A" or the "Varsity." The alternate members were referred to as "Team B" or the "Junior Varsity." Because the regular public members had been active on the Board since its earliest days, the industry and labor members often expressed a desire to have cases in which they were particularly interested decided by the members of Team A. If a case happened to be on the agenda of Team B, it would then be delayed for consideration by the "Varsity."¹³ It was not unusual for board members to become personally estranged.¹⁴ One public member on the National Board became notorious within the NWLB for sleeping during the executive sessions. Another used the executive sessions as an opportunity for reading his daily newspaper.

DEBATING TACTICS

Debate before the boards was usually unlimited.¹⁵ But unlimited debate did not handicap some public members who adopted "silent tactics." Labor and industry members were more active in utilizing the privilege. As a result, filibustering was an admitted procedure.¹⁶ Discussions were characterized by long speeches to such an extent that the Seattle Regional Board resolved "that no one, without the unanimous consent of the Board, be allowed to make a motion after having given a speech."¹⁷ In hotly contested cases, epithets and insults became the rule rather than the exception, and board members regarded themselves as "accustomed to being insulted by experts."¹⁸ Any technique, any practice, and any tactic that would help an industry or labor member win his point was acceptable. Public members were generally more restrained.

When the decision in a particular case seemed to be going according to the wishes of an actively interested labor or industry member and when only a few counter-arguments had been voiced, he might feign great impatience with the slowness of the board's work and request an immediate vote. When the opposition raised a factual point that

¹³ *Verb. Trans.*, Division A, July 17, 1944, p. A-41.

¹⁴ Compare H. D. Wolf, *op. cit.*, p. 390 f.

¹⁵ For example, see *Term. Report*, p. 709.

¹⁶ See the statement of George Googe, RWLB IV, AFL Member, *Verb. Trans.*, Meeting with Tripartite Division of the Atlanta Regional War Labor Board, January 13, 1944, p. 82.

¹⁷ RWLB XII, *Minutes*, April 25, 1944.

¹⁸ *Verb. Trans.*, Division A, June 27, 1944, p. A-87.

went counter to the position of the industry or labor member, great moral indignation might be feigned and the good sense of the contributor of the fact would be belittled. Although one of the arguments in favor of interest representation on administrative boards is that they are able to contribute information that leads to better decisions,

Neither most of the Labor Members nor most of the Industry Members (there are exceptions) is in the slightest degree adverse to asserting as a clearly established fact something which simply is not true, if there is a good chance of having it accepted as a fact. . . . They accept a good measure of falsification as part of the game.¹⁹

When all other methods of achieving a favorable decision in a crucial case had failed, a threat of resignation by industry or labor members was always a last resort. Later, the members would usually admit that their suggestion of resignation had been only a tactical play.²⁰ On some boards, when staff members had—upon request—provided background information, they so seldom escaped the vituperation of active board members that resolutions were adopted to allow the staff members to answer questions only if they were directed through the chair.²¹ Liberality in granting oral hearings before the board resulted in further delay in deciding cases.²²

THE DECISION-MAKING PROCESS

Tactical techniques at the board tables did not make the process of arriving at decisions easy. Some persons with NWLB experience maintain that discussions at board level did not result in the change of one vote and that all members came to the table with their minds already made up. Other board members, and the transcripts that the boards left behind, contradict this position. In making decisions, the public members were in the middle. The industry and labor members are inclined to argue that the position of the public members was always the decision of the board. Of the process of decision-making, Simon says,

In an important sense, all decision is a matter of compromise. The alternative that is finally selected never permits a complete or perfect achievement of objectives, but is merely the best solution that is available under the circumstances. The environmental situation inevitably limits the alternatives that are available, and hence sets a maximum to the level of attainment of purpose that is possible.²³

¹⁹ Dexter Keezer, Public Member, NWLB, "NOTE," No subject, dated January 8, 1945. See also *Term. Report*, p. 728.

²⁰ For example, the labor members of the Denver Regional Board once used this device to increase their bargaining power in a case involving a printers' union.

²¹ See RWLB X, "Daily Board Actions," September 17, 1943.

²² Saul Wallen, RWLB I, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report of RB I Activities for the period from May 15, 1944 through May 27, 1944," dated May 27, 1944.

²³ H. A. Simon, *op. cit.*, p. 6.

However, a tripartite board reaching a conclusion involves elements different from those involved when a single individual makes a decision. A public member, as an individual, could weigh what he regarded as reasonable alternatives within the scope of Board policy and compromise the various alternatives without the active influence of members who were his formal voting equal. The individual reaches a decision from a choice of alternatives that he alone has ultimately imposed upon himself, although he is, of course, influenced by the persons who surround him. When a public member of a tripartite body casts a vote (*i. e.*, reaches a decision upon which he is willing to act), the alternatives from which he finally chooses, in part, are determined by the willingness of the industry and or labor groups to accept and vote with his conclusions. Walter Gellhorn, Chairman of RWLB II, has noted this tendency: "Opinions which were strongly held by public members were sometimes diluted or refined or developed further because of the sentiments which the Board's other members reflected."²⁴ The votes of public members were often based upon compromises necessary to effect *Board* action, as opposed to compromises between alternatives that they had posed for themselves.²⁵ A public member might read a case analysis, hear a discussion, and conclude that a wage rate increase of 5 cents per hour should be granted under Board policy. He might make a motion to this effect. However, if the case were one in which the industry and labor members were actively interested or one that they regarded as involving a fundamental principle, neither group would be likely to acquiesce readily to the public member's position. The industry members might be holding out for no wage increase, and the labor members might be holding out for a 10 cent increase. If the industry and labor members were adamant enough, the public member might be forced to accept either of the two alternatives offered by industry or labor. In all likelihood, though, he would compromise with industry or labor, so that a majority of the board would vote for either a 2½ cent increase or a 7½ cent increase. A public member was thus often put in the position of voting for a decision that he did not personally favor.

COLLECTIVE BARGAINING AND TRIPARTITE BARGAINING

On regional boards there was usually no collective bargaining in the normal sense of weighing issues against each other. Rather each issue was generally decided on its merits in relations to Board policy.²⁶ Each issue, with all its pros and cons, was bandied back and forth by board members until a majority vote could be secured.

Tripartite bargaining was reflected in rulings and directive orders, which in some regions were signed by all members participating in the decision. The part-time character of board membership thus meant

²⁴ *Term. Report*, p. 617.

²⁵ A. Leiserson, *op. cit.*, p. 272.

²⁶ See the comments in R. G. Dixon, *op. cit.*, p. 149.

delay in getting orders and rulings out of the office. The members participating in the decision were not always available to sign the decisions.²⁷ Some regions required rulings and directive orders to have the signature of only the chairman of the board, with the names of participating members incorporated as part of the order or ruling.²⁸ Regional boards did not write opinions in substantiation of every directive order they issued. When an opinion was written the existence of tripartite boards delayed the issuance of the opinion, since it was usually circulated to all members for comments before being released.²⁹

VOTING PROCEDURE

It was the responsibility of each group's chairman, "captain," or "whip" to determine which members of his group were to attend each board session.³⁰ If only a quorum were present, there was no problem about who was to vote. Occasionally board members would sit on cases in which they were interested, even though they were not scheduled for service on that day. RWLB IV in Atlanta usually used its part-time public members as voting members, but additional full-time public members participated in board discussions and "guided" the votes of the part-time members.³¹ Usually, non-voting members, regardless of the interest they represented, were allowed to participate in board discussions.³² In one region they might make motions, but not vote on them.³³ If more than the necessary number of industry or labor members appeared at a board session, the group members themselves decided who would vote for the group.³⁴ Members attending a regular board session occasionally delayed its work by leaving to sit with a session of one of the board's committees that happened to be handling a case in which they were interested. This procedure occasionally resulted in disruption of personal relations among board members.³⁵

All regional boards made some use of proxy voting, although in none did it become the general rule. The National Board used the proxy system more extensively than the regions. In one instance the NWLB adopted a general policy on automatic progression within rate ranges although only one public member actually sat in the discussion and he used the proxy of another. Three days later a CIO member

²⁷ RWLB VI, *Minutes*, July 26, 1943. See also Lloyd Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Authentication of Board Decisions," dated October 2, 1943.

²⁸ RWLB VIII, *Minutes*, June 27, 1944.

²⁹ RWLB VII, *Minutes*, November 3, 1943.

³⁰ RWLB VIII, *Minutes*, March 8, 1943; RWLB I, "Weekly Report," dated February 16, 1943; RWLB IX, *Minutes*, March 1, 1943; RWLB XI, *Minutes*, February 16, 1943.

³¹ *Term. Report*, p. 654.

³² RWLB XII, *Minutes*, August 1, 1944.

³³ RWLB IV, *Minutes*, April 21, 1943.

³⁴ RWLB VIII, *Minutes*, September 15, 1943.

³⁵ H. Buckman, RWLB V, Industry Assistant, to Members Industry Section, RWLB V, Memorandum, No subject, February 28, 1944.

objected to this method of adopting a general policy and succeeded in delaying its implementation until a complete Board sat to discuss it.³⁶

All regional boards made some use of proxy voting, although in none did it become the general rule. The industry members of the Kansas City Board attempted to bar the use of proxies, but their motion to this effect was defeated.³⁷

In deciding general policy questions within its discretion, RWLB VIII in Dallas seldom voted the first time an issue was on the agenda. The policy was formulated in terms of a resolution, and board members not in attendance at the executive session were polled by mail. When the returns were in, the issue would again be placed on the agenda and a vote taken.

Sometimes the bargaining was so close and the tripartite factor so acute that regional boards adopted procedures for the order of voting. The Detroit Board had a rule "that the group making the motion votes first, the public members second, and the other group last."³⁸ Often, board members would delay their votes or change them after they had been recorded. This practice was common to both the National Board and to the regional boards and caused several administrative headaches. When the National Board voted to revise its General Order No. 30, the revision was noted in the Board's *Minutes*. Since these *Minutes* were sent to the regions, many regional boards began to act on the basis of what they knew to have been the action of the National Board. Several days after the National Board had acted, one group "changed" its votes by informal action that did not find its way into the *Minutes*. As a result, regional boards were following a policy that did not have the sanction of the National Board.³⁹ Some regional boards adopted rules regarding the length of time within which a member might change his vote.⁴⁰ Since regional boards usually operated with a quorum of six, when the public members voted on different sides, a tie vote occurred. Relief from this deadlock was reached by calling a special nine man board to resolve the conflict.⁴¹ The odd labor member represented the union that was involved in the case.

A UNANIMOUS VOTE

The National War Labor Board and its regional boards were generally proud of their records of unanimity. Agreement among the three groups allowed the boards to face the public and other government

³⁶ *Verb. Trans.*, Division B, September 22, 1944, pp. B-366 ff.

³⁷ RWLB VII, *Verb. Trans.*, Special Board Session, dated October 18, 1943.

³⁸ RWLB XI, *Minutes*, June 29, 1943.

³⁹ NWLB, Field Memorandum, No. 25, Subject: "General Order No. 30—Proposed Revision," dated August 29, 1944; and NWLB, "Newsletter," July 27, 1944, p. 1.

⁴⁰ For an example of such a rule, see RWLB VIII, *Minutes*, March 22, 1944.

⁴¹ NWLB, "Newsletter," February 4, 1944, p. 7; and RWLB IV, *Minutes*, February 15, 1943.

agencies with a stronger front.⁴² When a decision is called "unanimous," it is only to be concluded that all the members voting on the case cast their final vote on the same side. A unanimous vote did not mean that all members voting would have reached the same conclusion had they been deciding singly. A unanimous vote did not mean that all board members voted on the same side *for the same reasons*. A unanimous decision that reflected little unanimity was the rule rather than the exception.⁴³ On the other hand, many dissents were made "for the record." In these instances the dissenting board members would recognize that the decision of the majority was reasonable and within the power of a regional board's interpretation of NWLB policy. But for group relations reasons they preferred to be recorded in the minority.

The boards' record of unanimity varied with the type of issue on which a vote was taken. In all probability a unanimous vote was achieved a much greater percentage of times when the issue was compliance, general policy, or defense of previous action against outside attacks. Indications are that unanimity was achieved more often on voluntary cases or on wage issues in dispute cases than on non-wage and fringe issues. If, for whatever reasons, a regional board voted unanimously, the National Board was inclined to presume that the action of the regional board should be upheld.⁴⁴ A unanimous decision of a regional board carried a disproportionate amount of weight. An entire board could operate outside the scope of its authority as easily as a majority of a board. And the quest for unanimity, especially in all policy statements, led to the adoption of vague and unclear principles and standards.

The delays and difficulties arising from the tactics at the board table were common in nature to those of all multi-headed agencies. However, tripartitism aggravated the usual difficulties encountered when a board performs its collective duties. The problems of the board table were reflected in the depth and scope of NWLB organization. Tripartite table tactics even made supervision and control difficult.

⁴² The National Labor Board had the same habit of trying to achieve unanimity. See Lorwin and Wubnig, *op. cit.*, p. 119.

⁴³ A classic example pointed out by Dexter Keezer in "Same Destination; Different Routes," Undated, is contained in *Verb. Trans.*, April 27, 1943. Nine Board members were participating in the session, and all voted "Aye" on a motion to grant a wage increase. After the vote had been taken, seven members indicated the reasons for their vote. All seven had different reasons! The Vice-Chairman's comment was: "Such beautiful rationalization I have never seen."

⁴⁴ *Verb. Trans.*, Division B, September 20, 1944, p. B-212.

CHAPTER XIII

METHODS AND TECHNIQUES OF SUPERVISION AND CONTROL

I assume everybody of the [Regional] Board has a right to ask anyone of the National Board office for their opinions but when someone comes out here to make investigations or to participate in these decisions, we feel the Board itself should ask those people to come out here and particularly we resent the actions of this man in particular because he intimated, as I understand, that the Wage Rate Committee here did not even know what the first substantial cluster in a group of wage rates were and we feel that we can get along very well without that. We do not need any Gestapo unit in Washington checking up on us.

—Samuel C. Evett, RWLB VI, CIO Member, Verb. Trans.,
January 19, 1945, p. 17.

Any delegation of authority requires some degree of supervision and control. The more restrictive the substantive content of delegation to the field, the less the requirements of strict supervision and control; conversely, the less restrictive the substantive content of the delegation, the greater the requirements of strict supervision and control. An uncontrolled delegation of power to act results in action beyond the scope of that authority. A minutely controlled delegation of power to act results only in change in the location at which paper work is done, not in regional decentralization or in the delegation of authority. Greatly restricted substantive delegation accompanied by strict and routinized methods of control and supervision may result in wasted effort. Broad substantive delegation accompanied by inexact and unroutinized methods of control results in regional activity in different dimensions from that of the parent agency. Between these alternatives, national agencies that use regional offices must chart their course.

Methods of supervision and control may be informal in the sense that they are unroutinized, or formal in the sense that they are routinized. Supervision and control may be effected through measures taken in advance of action or through measures taken as a result of action. In considering the activities of the National War Labor Board, informal methods will first be considered. Informal methods of supervision and control after initial regional action, then before initial regional action, will be discussed. Consideration of formal methods of supervision and control will follow. These logical categories are not always clearly and separately distinguishable in practice.

INFORMAL SUPERVISION: (1) STAFF VISITS

One method used by the National Board to supervise its agents was to send a staff member to investigate the work of the regional board. This procedure resulted in either the staff member's checking upon a

sample of cases or of his investigating the manner in which the regional board was following national instructions on such matters as setting wage rate brackets. Some regional boards were resentful of this investigatory practice. They referred to the National Board's agents as "Gestapo." The investigations of methods of setting brackets incurred the regions' greatest wrath. Investigators were usually sent by the National Wage Stabilization Division or by the Executive Director, although they were occasionally directly authorized by the National Board itself.¹

Regional boards greatly resented staff investigators, and this practice on one occasion resulted in the labor members' temporarily withdrawing from participation in board activities.² Reaction against use of this method of investigation spread rapidly from one region to another and was generally destructive of morale.³

The regional boards objected for several reasons.⁴ First, they resented the investigations' being authorized by National Board staff divisions or by the Executive Director. They thought that the National Board itself should determine the necessity of an investigation. Second, they held that an investigation should be conducted by a tripartite group. In practice, the investigation was usually conducted by a staff member of a national division or by a staff member of a different region.⁵ Third, the regional boards objected to the manner in which the investigators conducted themselves. They maintained that the investigators simply walked in as if they were the National Board itself, went directly to the wage stabilization division, and demanded cases and information. One investigator invited himself to a meeting of the board's bracket division and dominated the meeting to the extent that he convinced the division to act the way he thought it should act. Fourth, the regional boards did not approve of the sample check.⁶

The National Board countered these arguments by confirming the power of the Executive Director to order such investigations. It explained that the national divisions had power to "review" regional board action, but not to "change policy, procedure, or practice."⁷ Review of

¹ As examples, see RWLB VI, *Verb. Trans.*, January 19, 1945, p. 20; RWLB VII, *Resolution*, "Concerning the Current Investigation of its Activities," dated December 13, 1944; and *Verb. Trans.*, March 6, 1943, pp. 832 ff.

² John I. Rollings, RWLB VII, AFL Member, to George T. Brown, Executive Assistant to NWLB AFL Members, Telegram, dated December 19, 1944.

³ RWLB VI, *Verb. Trans.*, January 19, 1945, p. 18; and *Transcript*, Telephone Conversation between Mr. Nachtman [RWLB VII, Chairman] in Kansas City and Mr. Madden [RWLB VIII, Chairman], December 18, 1944.

⁴ For example, see RWLB VII, *Resolution*, "Concerning the Current Investigation of its Activities," December 13, 1944; RWLB VI, *Verb. Trans.*, January 19, 1945; *Verb. Trans.*, January 11, 1945, p. 172; January 16, 1945, pp. 5 f; and January 19, 1945, p. 24.

⁵ *Verb. Trans.*, Division A, January 16, 1945, p. 49.

⁶ This post-audit technique of control is discussed later.

⁷ NWLB to RWLB VII, Memorandum, Subject: "Resolution of the VIIth RWLB to the NWLB Concerning the Current Investigation of its Activities," dated January 5, 1945.

past decisions by random sample it defended. The National Wage Stabilization Division advised that the investigators had been instructed first to present themselves to the chairmen of the boards who would then give them access to the necessary information. Further, the investigators had been instructed to show the regional boards the preliminary drafts of their reports to Washington.⁸

As a result of several investigations that incurred regional ill-will and as a result of the regions' challenging the authority of the national division heads to authorize trips to the field,⁹ the Executive Director ordered that "No trip to the field as part of our Regional liaison program may be made without my prior authorization."¹⁰ Use of Washington staff members to supervise and to control the regional offices could have been made effective. However, this was difficult because tripartite boards headed the regional offices, because the professionally competent National Wage Stabilization Director was an advocate of stabilization principles, and because regions were not oriented to the values of the investigations.

(2) CALLING REGIONAL BOARD MEMBERS TO WASHINGTON

When it discovered that a regional board was not applying correctly such principles as maintenance of membership, the National Board would request a tripartite division of the regional board to meet with it in Washington. These meetings of the National Board with a regional board were not regularly scheduled, but were usually called when misuse of a principle became known as a result of a series of case decisions.¹¹ At these meetings the National Board explained to the regions how they had been misinterpreting Board policy. The National Board never directed the regional groups to take specific action. The discussions were confined to "general principles for your guidance rather than detailed instructions."¹² This method of supervision achieved much "face-saving." For this purpose it was effective and left the regional boards with the knowledge that their position and feelings were being considered. As a method of achieving desired substantive results, it was not ineffective.

(3) REGIONAL CONFERENCES

Conferences of regional representatives were another method of control and supervision. Although the National Board early decided to hold such periodic meetings, in practice the conferences were held at

⁸ RWLB VI, *Verb. Trans.*, January 19, 1945, p. 24.

⁹ This problem is considered later in Chapter XIV.

¹⁰ T. W. Kheel, Executive Director, to All Division Heads, Memorandum, No subject, dated January 17, 1945.

¹¹ As examples, see *Verb. Trans.*, December 8, 1943; pp. 404 ff; January 17, 1944, pp. 82 ff; February 24, 1945; February 10, 1945; and April 16, 1945, p. 4, on which a summary of such meetings which had been called to discuss brackets is listed.

¹² *Verb. Trans.*, February 4, 1944, p. 913.

times propitious to the solving of particular problems that confronted the Board.¹³ These conferences customarily convened in Washington with representatives of all the regions present. At various times, meetings were held in Chicago, New York, Detroit, Kansas City, and Atlanta. Not all the conferences were initiated by the National Board, nor were all regions represented at them. A region with its headquarters city located where rail transportation could bring the representatives to Washington in an overnight trip was likely to be represented in more meetings than one whose headquarters city was more than a day's travel away. Some conferences were restricted to those regions "within overnight distance from Detroit" or to those "East of the Mississippi."¹⁴ A meeting usually lasted two full days.

Tripartite representation was not the rule at the regional conferences. At the general consultative conferences, the regional chairmen were always present. In many instances, the regional division directors accompanied them. When this occurred, the meetings would break up into several groups with each member of the conference attending a session pertaining to his specialty.¹⁵ In addition to the general meetings there were also special regional conferences of disputes directors, wage stabilization directors, information directors, enforcement attorneys, directors of administrative management, personnel officers, and fiscal officers. Approximately twenty of all types of regional conferences were held. The number was restricted in part by budget limitations and wartime travel restrictions.

The regions welcomed these conferences. They felt, however, that those conferences that were not held in Washington often yielded the best results. This was true mainly because their sessions with National Board and national staff personnel would not be interrupted by the urgent press of other business and because the National Board Industry and Labor Members would not occupy the time of the regional personnel.¹⁶ Quite often the regional chairmen left the conferences with a "feeling of frustration." They were often called for consultation, and they always expected decisions. It was not unusual for two public members to give conflicting advice, or for the different groups of the Board to give different advice.¹⁷ Insofar as these conferences allowed the National Board, before acting, to find out regional opinion, they

¹³ Lloyd K. Garrison, Executive Director, to Regional Chairmen, Memorandum, Subject: "Relationship between Regional Boards and the National War Labor Board," dated February 25, 1943.

¹⁴ NWLB, "Newsletter," September 18, 1943; and NWLB "Newsletter," January 28, 1944.

¹⁵ In *Verb. Trans.*, Meeting of Regional War Labor Boards East of the Mississippi, dated March 20, 1943, the agenda for such a meeting is given.

¹⁶ Carl Schedler, Director of Field Operations to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Conference of Regional Chairmen," September 18 and 19, 1943, Detroit, Mich., dated September 20, 1943.

¹⁷ *Verb. Trans.*, Conference of Regional Chairmen, dated December 9, 1943, p. 2.

were effective. Insofar as they were designed to provide the regions with conclusions on which they might act, they were ineffective. Insofar as they contributed to regional knowledge of National Board problems and to the national knowledge of regional problems, they were most effective.

(4) NATIONAL BOARD VISITS

In another attempt to guide the regional boards and to build their morale, the NWLB early decided that its tripartite groups should visit the regional offices.¹⁸ This program was carried out more effectively after January of 1944, when the number of public members on the National Board was extended to eight. These visits were not intended as reprimands or investigations, and they were welcomed by the regions. Usually, the tripartite group would have a session with the tripartite regional board and another with the regional staff. Then the groups would break up for private consultation. Top members of the Washington staff also visited the regions for these same informational purposes.¹⁹

(5) PERSONAL INTEREST SUPERVISION

One method of supervision and control developed informally through custom, habit, and experience. When a National Board member had had some experience with a particular regional board or commission, he would become informally responsible for it. This development arose because the regional boards often directed questions to a particular National Board member and because the National Board often requested a particular Board member to investigate a specific problem that had arisen within a region. When Senator Wayne Morse was a Board Member, he was informally responsible for the West Coast Lumber Commission, the San Francisco Regional Board, and the Seattle Regional Board. When Morse resigned, Public Member Dexter Keezer, also with experience on the West Coast, seems to have acquired this responsibility. Frank Graham, being a Southerner, seemed to maintain liaison with the Atlanta Regional Board, during his active days of service. Similarly, when a regional board chairman was promoted to membership on the National Board, he found himself informally responsible for the region from which he came. This type of personal supervision and control, though most informal, was effective. It is easier to take guidance and direction from a member of the "in-group" than it is to take it from a member of an "out-group."

¹⁸ *Verb. Trans.*, December 3, 1943, p. 427.

¹⁹ M. T. Van Hecke, RWLB IV, Regional Chairman, to Members of the Fourth Regional War Labor Board, Memorandum, Subject: "Report for Two Weeks Ending April 29, 1944," dated April 29, 1944; and RWLB III, Regional Chairman, "Weekly Report," dated August 31, 1944.

(6) TEMPORARY WASHINGTON DUTY

Some supervision of regional activity was affected by national use of regional personnel. The practice was initiated by the industry and labor groups. They brought in regional board members to sit on the National Board as alternates. The public members soon adopted the practice of calling in regional board public members to serve on various committees of the Board.²⁰ This method allowed the national office and the regions to become acquainted with their respective problems. National use of regional board public members often made the region short of personnel and greatly handicapped it, especially when the National Board used the regional board members for extended terms. When this occurred, the regional position remained filled, and the regional board was not able to hire a substitute.²¹

Staff personnel of regional boards was also used for short periods of time for the same purposes.²² Under this program, members of the regional wage stabilization and disputes divisions were temporarily assigned to Washington.²³ This experiment was deemed by the National Board to be "very helpful."²⁴ Regional board use of National Board staff personnel was also suggested, but never effected.²⁵

(7) INTER-REGIONAL GUIDANCE

The regional boards guided one another. A distinctive policy of one region soon became known to other regions because of group pressure to adopt a similar one—especially if the policy were on the "liberal" side. Inter-regional guidance came about through exchange of personnel and exchange of information. The regions freely transferred personnel for short periods in order to help each other out of strained situations,²⁶ and the National Board approved of the procedure.²⁷ Adjoining regional boards, on their own initiative, held inter-regional conferences in attempts to learn new and effective techniques and procedures.²⁸ And

²⁰ See *Verb. Trans.*, May 19, 1943, p. 275; *Verb. Trans.*, July 16, 1943, p. 606; and Norman J. Ware, RWLB II, Vice-Chairman, to T. W. Kheel, Executive Director, Letter, dated March 15, 1944.

²¹ See RWLB II, Regional Chairman, "Weekly Report," dated December 4, 1943.

²² *Verb. Trans.*, July 16, 1943, p. 606.

²³ Lloyd K. Garrison, Executive Director, to Charles Graham, RWLB IX, Regional Chairman, Letter, dated October 4, 1943.

²⁴ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, No subject, dated December 15, 1943.

²⁵ NWLB, "Newsletter," July 10, 1943, p. 7.

²⁶ D. G. Tuck, RWLB X, Acting Director, Division of Administrative Management, to T. F. Neblett, RWLB X, Regional Chairman, Memorandum, Subject: "Financial Condition in the San Francisco Region," dated October 4, 1944.

²⁷ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Detail of Personnel Across Regional Lines," dated June 28, 1943.

²⁸ For examples, see RWLB II, Regional Chairman, "Weekly Report," dated January 1, 1944; RWLB II, Regional Chairman, "Weekly Report," dated January 15, 1944; and P. F. Nachtman, RWLB VII, Regional Chairman, to T. W. Kheel, Executive Director, Memorandum, Subject: "Bi-Weekly Report," dated August 5, 1944.

the regular regional reports to the National Board were also circularized among all the regions.²⁹ Telephone calls and letters were often used to find solutions to immediate problems. Substantial reliance of a regional board upon other regional boards tends to reflect a lack of proper guidance from the national level.

FORMAL SUPERVISION

In addition to the foregoing informal methods of supervision and control, the National War Labor Board used formal methods that were part of a routinized and consistent procedure. These were not methods devised to meet unexpected immediate problems, but were intended to provide supervision and control for the daily work of the regional boards.

(1) THE APPEALS SYSTEM

The most formal method used by the National War Labor Board to supervise and control its regional boards was the system of appeals. After the parties to a dispute case or the applicant in a voluntary case had exhausted their rights of appeal and reconsideration before the regional boards, they might appeal their case to the National Board.³⁰ Appeal was permissible within fourteen days after the directive order or the ruling had been received by the parties involved.³¹ This same right of appeal existed from the findings and determinations of regional boards in enforcement cases.³² In dispute and voluntary cases, petitions for review were not allowed unless it was shown by substantial proof that the regional board action: (a) exceeded its jurisdiction; (b) contravened established Board policy; (c) presented a novel question; or (d) resulted in unfairness to the petitioner and caused him substantial hardship.³³ There was no direct appeal from the regional boards' setting of brackets, although appeal from them was occasionally attempted.³⁴ The National Board might also take a case from a regional board on its own motion.

From Table 8 and Table 9 several conclusions about the appeals system as a control technique may be drawn. First, the appeals system was more important as a control measure in dispute cases than it was in voluntary cases. The National War Labor Board decided finally approximately one-third of all dispute cases that came before the regional boards, commissions, and panels; whereas it decided finally less

²⁹ NWLB, "Newsletter," April 3, 1943, p. 2.

³⁰ For similar appeals systems, see E. S. Redford, *op. cit.*, p. 62; and Harry H. Millis and R. E. Montgomery, *op. cit.*, p. 756.

³¹ NWLB, "Rules of Organization and Procedure," March 1945, Section 2.38.

³² *Ibid.*, Section 2.74.

³³ The appeals procedure that has been described is the one that was used in the mature days of the Board. Its development may be traced through the changes in the Board's "Rules of Organization and Procedure."

³⁴ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Appeal of Wage Brackets," dated April 1, 1944.

TABLE 8*

PETITIONS FOR REVIEW OF DECISIONS IN DISPUTE CASES MADE BY REGIONAL
BOARDS, COMMISSIONS, AND PANELS,† DECIDED BY THE NATIONAL
WAR LABOR BOARD, BY NATURE OF DISPOSITION

Period Covered	Number of Petitions for Review Received	Petitions for Review Disposed of								
		Total Decisions Upheld, Reversed, Modified		Agents' Decisions Upheld		Agents' Decisions Reversed		Agents' Decisions Modified		Otherwise Disposed of†
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	
June 25, 1943- June 30, 1944. . .	2,055	186	100.0	47	25.3	29	15.6	110	59.1	1,202
July 1, 1944- August 18, 1945. .	2,976	2,364	100.0	1,992	84.3	102	4.3	270	11.4	493
Total.....	5,031§	2,550	100.0	2,039	80.0	131	5.1	380	14.9	1,695

*See Table 3, *Term. Report*, p. 481. Information on appeals from regional boards exclusively is not available.
†Includes the Wage Adjustment Board.

‡Includes petitions for review (a) that were denied, that is, the National Board found that on the basis of its rules there were no grounds for appeal, (b) that were withdrawn by the appellants and (c) that were returned by the National Board to the Regional Board, Commission, or Panel for reconsideration.

§During the period June 25, 1943 - June 30, 1944, the Regional Boards, Commissions, and Panels decided 4,569 dispute cases during the period July 1, 1944 - August 18, 1945, these agents decided 6,219 dispute cases. Thus petitions for review to the National Board in this entire period June 25, 1943 - August 18, 1945 represented 47 percent of the dispute cases decided. This comparison is not strictly accurate because petitions for review received in June, for example, were based on directive orders issued prior to June.

TABLE 9*

PETITIONS FOR REVIEW OF DECISIONS IN VOLUNTARY CASES MADE BY REGIONAL
BOARDS, COMMISSIONS, AND PANELS,† DECIDED BY THE
NATIONAL WAR LABOR BOARD

Period Covered	Number of Petitions for Review Received	Petitions for Review Disposed of								Otherwise Disposed of†
		Total Decisions Upheld, Reversed, Modified		Agents' Decisions Upheld		Agents' Decisions Reversed		Agents' Decisions Modified		
		Number	Percent	Number	Percent	Number	Percent	Number	Percent	
June 25, 1943- June 30, 1944. . .	758	83	100.0	17	20.5	42	50.6	24	28.9	336
July 1, 1944- August 17, 1945. .	1,931	1,510	100.0	1,268	83.9	161	10.7	81	5.4	314
Total.....	2,689§	1,593	100.0	1,285	80.7	203	12.7	105	6.6	650

*See Table 25, *Term. Report*, p. 508. Information on appeals from regional boards exclusively is not available.
†Includes Wage Adjustment Board.

‡Includes petitions for review (a) that were denied, that is, the National Board found that on the basis of its rules there were no grounds for appeal, (b) that were withdrawn by the appellants, and (c) that were returned by the National Board to the Regional Board, Commission, or Panel for reconsideration.

§During the period June 25, 1943 - June 30, 1944, the Regional Boards, Commissions and Panels decided 181,520 voluntary applications of which 93,233 were approved in part or denied in full; during the period July 1, 1944 - August 17, 1945, these agents decided 216,399 voluntary applications of which 114,132 were approved in part or denied in full. Thus petitions for review to the National Board in this entire period, June 25, 1943 - August 17, 1945, represented .07 percent of the Voluntary cases decided or 1.3 percent of the cases that might be appealed, i.e., partial approvals and full denials.

than one percent of the voluntary cases originally decided by its agents. The National Board's emphasis on appeals in dispute cases is explainable. In voluntary cases the Board more definitely attempted to guide its regions by general rules. Whereas in dispute cases the Board never issued general rules to guide the regions. Thus emphasis upon the appeals system became more necessary as a control measure for dispute cases.³⁵ In addition, the parties to a dispute case were less likely to be satisfied with a regional board decision.

Second, as the Board grew older it granted a greater percentage and a greater number of petitions for review. And, third, as the Board grew older it upheld a greater percentage and a greater number of regional board decisions.

During the first year of the decentralization program, the National Board was criticized because it was reviewing regional board cases on their merits. Indeed, overthrowing the decisions of regional boards on any grounds took its toll of morale.³⁶ The National Board at this time was not greatly sympathetic to the regional boards' feelings. In discussing the National Board's review function, one public member wrote,

I consider it the duty of the National Board to reverse a Regional Board whenever in its judgment a reversal is in order.

My decision, a copy of which is attached, is a complete answer to [RWLB III Chairman] Garrett's comments to you to the effect that "Ordinarily, as you know, appellate courts do not undertake to try the facts *de novo*." The National Board was very careful to reserve to itself the power to try a case *de novo* if in its judgment the facts warrant it. I hope we can get the Regional Boards to see that they should take a very impersonal attitude toward the reversal of their decisions by the National Board and take their reversals as a matter of course.³⁷

In its first year to a greater extent than in its later years, the National Board did review cases on their merits, even though its rules of organization and procedure indicated only limited grounds for review. These grounds were known to the regional boards and were included in the rules of procedure for the Appeals Committee.³⁸ Throughout its existence the Board was quick to rule upon any cases in which regional board decisions were not, on the merits, suitable to it. In the words of

³⁵ See the comments of H. A. Simon in *op. cit.*, pp. 234 f.

³⁶ Sylvester Garrett, RWLB III, Regional Chairman, to NWLB, Memorandum, Subject: "Report of Regional Board III Activities for Week Ending July 2, 1943," dated July 3, 1943.

³⁷ Wayne Morse, Public Member, NWLB, to Lloyd K. Garrison, Executive Director, Memorandum, No Subject, dated July 10, 1943.

³⁸ See T. F. Neblett, RWLB X, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Report for Week Ending November 26, 1943," Not dated; J. W. Rupley, Bureau of the Budget, to J. Otis Garber, Bureau of the Budget, Memorandum, Subject: "Appeals Committee of the National War Labor Board," dated November 17, 1943; and Ross S. Shearer, Bureau of the Budget, to Mr. Martin, Bureau of the Budget, Memorandum, Subject: "Appeals Committee of the National War Labor Board," dated December 3, 1943.

one National Board member, the Board could not "defend reversals in a good many cases except by saying it is a novel question."³⁹ The National Board's practice of reviewing regional cases on their merits, even in violation of its established rules of procedure, was necessary if any over-all national policy were ever to be established. For the regional boards were deciding cases involving issues on which the National Board had not acted.

In handling appeals cases, the National Board was guided by expediency. For when it agreed with the merits of a regional board decision, it eagerly proclaimed that there was a presumption in favor of the finding of the regional boards. Especially was this so when there was a long history of a regional board's use of a particular policy.⁴⁰ The dilemma between review on the merits and presumption in favor of regional decisions was summarized by Vice-Chairman Taylor:

Our appeals procedure provides that we will not overturn our Regional Board activity if it doesn't contravene established Board policy. Where new policies come up, where this Board doesn't have an established policy, then this Board says, "Well, let them establish the policy. . . ."

Here we were, as a National Board, battling over this time for changing clothes in the meat-packing case and trying to work out what was in the nature of a national policy. The Regional Board came up and said, "We will pay for that changing of clothes." Now I think it was a legitimate decision, don't get me wrong on that; I think there was a great equity for it.

Well, the case comes here on appeal and we say, "That does not contravene any established Board policy." Of course it didn't, because the Board had not established its policy yet. So we say that under our established appeals procedure that is O. K. Then our Board is in a position of not being able, independently, to develop a policy on changing clothes.

Now it seems to me that at that point in our appeals procedure we are abdicating our policy-making responsibility to the Regional Boards, and that is why I say it seems to me that on a new item like that—just as it came up in Continental Bakeries for example—I think it is up to this Board to say what the policy is going to be on that. That is, not to say that the Regional Board can make it and then if it doesn't contravene anything we say it is O. K.⁴¹

How effective the NWLB appeals system was in guiding future action of regional boards, as opposed to its effectiveness in giving proper relief to those subject to regional board decisions, is questionable. From the time when the first appeals cases were reaching the National Board until the Board's last days, the regions complained that in many cases in which they were overruled they never learned the reasons for the decisions.⁴² This situation resulted because the National Board did not

³⁹ *Verb. Trans.*, Division B, June 20, 1945, pp. 70 f.

⁴⁰ *Verb. Trans.*, Division A, September 19, 1944, p. A-93.

⁴¹ *Verb. Trans.*, Division A, February 1, 1945, pp. 13 f.

⁴² For example, see NWLB, "Newsletter," July 24, 1943; George B. Noble, RWLB XII, Regional Chairman, to Dexter Keezer, Public Member, NWLB, Letter, dated November 17, 1944; W. W. Wirtz, RWLB VII, Regional Chairman,

write opinions in all cases that it decided. The Board first attempted to meet the problem in early 1944. It resolved that whenever the reasons for a National Board reversal or modification of a regional board order were not apparent from its face, the Chairman of the Appeals Committee would preface the order by a short paragraph or two explaining the reasons. Like so many Board resolutions, this one fell into desuetude because the Appeals Committee Chairmen "have found that they do not have the time to do what is called for."⁴³ Eight and a half months after this first resolution, the Board authorized regional chairmen to "request" that the transcript of discussion of any case that was reversed or modified be sent to them.⁴⁴ This system too proved ineffective. The National Board was most reluctant to release its transcripts due to the embarrassing nature of the discussions. And especially with "politically hot" cases, the real reason for the decision might be "off the record."⁴⁵ It was not until August 1945, that the National Board voted "to send transcripts to the Regional Boards whenever the regional order is vacated or modified."⁴⁶ The lack of formal provision for keeping regional boards informed as to why their decisions were reversed was compensated for in part by the NWLB public members occasionally writing a letter to a regional chairman when one of his cases was overruled.

(2) REGIONAL REPORTS

The National Board required regular reports from its regional boards. Those reports were both of statistical and expository types. Statistical reports included such information as the number of cases ruled upon by the Wage and Hour offices, the number of Form 1 appeals, and the number of appeals from the regional wage stabilization director.⁴⁷ Regional internal administration was reviewed through various fiscal and personnel reports.⁴⁸ The regular expository reports of

to T. W. Kheel, Executive Director, Memorandum, Subject: "Monthly Report," dated May 31, 1945; and Dexter Keezer, Public Member, NWLB, to T. W. Kheel, Executive Director, Memorandum, No subject, dated October 26, 1944.

⁴³ Dexter Keezer, Public Member, NWLB, to T. W. Kheel, Executive Director, Memorandum, No subject, dated October 26, 1944.

⁴⁴ NWLB, Field Memorandum, No. 77, Subject: "Reversals or Modification by National War Labor Board of Decisions of Regional Boards and Commissions," dated December 16, 1944. Also see *Verb. Trans.*, Division B, June 20, 1945, p. 73.

⁴⁵ "Note," dated January 10, 1945. This unsigned, two-page typewritten memorandum is available in the file of Dexter Keezer, NWLB, at the National Archives. Since it is written with Keezer's inimitable style and humor, it is presumed that the authorship is his.

⁴⁶ NWLB, Field Memorandum No. 77, Supplement 1, Subject: "Transcripts—Reversal, Modification or Remand by National War Labor Board of Decisions of Regional Boards and Commissions," dated August 1, 1945.

⁴⁷ See NWLB, *Manual of Operations*, Sections 5101 and 5102.

⁴⁸ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Deadlines for Submission of Recurring Fiscal Reports," dated November 17, 1943.

each regional board chairman were to discuss "the principal activities of his Board" during the period reported on.⁴⁹ From March 1943, until March 1944, these reports were weekly; from then until September 1944, they were bi-monthly; and during the latter part of the Board's existence, they were monthly.

These "newsletters" were informal in style. Not infrequently they were addressed to "Dear Carl" and signed, "Joe." Their substantive content was usually divided into five parts corresponding to the basic organization of the regional boards. There were sections on board activities, the legal division, the administrative management division, the disputes division, and the wage stabilization division. At times the regional chairmen, who wrote the reports, seemed to be competing to see which one could relate the most humorous details. After the early stages of regional board development, it became customary for the reports to include more "oddities" than routine problems. One limitation upon this method of supervision and control was that the regional chairman could report to the higher levels only those matters that he chose to report. For example, one region had a Communist personnel scare which resulted in the resignation of the regional board vice-chairman, but which never appeared in the board's reports. In addition to receiving these specially prepared reports, the National Board also got copies of the minutes of the regional boards.⁵⁰ Verbatim transcripts taken by the regional boards on wage bracket hearings were also requested by the Washington office.⁵¹ Various other types of specific reports were required.⁵²

(3) THE TEN DAY FREEZE

Immediately after the regional war labor boards were created, each ruling that they made and each directive order involving wage and salary adjustments that they issued had to be submitted to the National Board. No ruling or order became effective until ten days after it had been received by the National Board. During this ten day period, the National Board might disapprove the case or set it down for review. If either of these two possibilities occurred, the order was stayed.⁵³ The ten day freeze applied only to cases ruled upon by the regional boards and

⁴⁹ Lloyd K. Garrison, Executive Director, to Regional Chairmen, Memorandum, Subject: "Relationship between Regional Boards and the War Labor Board," dated February 25, 1943.

⁵⁰ See NWLB VIII, *Minutes*, July 24, 1945.

⁵¹ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Regional Board Discussions of Wage Brackets," dated May 20, 1943.

⁵² See NWLB, Field Memorandum, No. 80, Subject: "Regional Operations Sections, NWLB—Functions of these Sections and Data to be Transmitted by Regional Boards," dated January 1, 1945; and NWLB, Supplement No. 1 to Field Memorandum No. 80, Subject: "Board Agency Operations Sections, NWLB—Functions of these Sections; Data to be Supplied by Board Agencies; Procedure," dated February 3, 1943.

⁵³ NWLB, "Rules of Procedure," dated January 26, 1943.

not to those ruled upon by the regional directors of wage stabilization.⁵⁴ When experience proved that the National office did not have the staff to make effective this pre-review procedure, the National Board tried to decrease the number of cases coming to the Washington office. For this purpose, the procedure was changed so that the ten day freeze on voluntary cases applied only when a decision by a regional board was not unanimous.⁵⁵ In dispute cases, whether the decision was split or unanimous, the regional board directive order was subject to the freeze.⁵⁶

Regional boards were generally opposed to any freeze.⁵⁷ And some National Board members objected to the system as it was applied to voluntary cases, because it tended to divide the regional boards into factions and put a premium upon unanimous decisions.⁵⁸ One public member pointed out that unanimous decisions of the boards might just as easily be beyond the scope of Board policy as split decisions, but the Board refused to consider this argument at this time.⁵⁹

(4) STAY OF RULING

Again because of a heavy case load in the Washington office and because of the objections of regional boards to the ten day freeze, the NWLB changed the procedure some two and a half months after it had been adopted. The new policy provided that all rulings in voluntary cases could be issued when made, with the exception that in those cases where the vote of the board was split, *any* member participating in the decision could stay the ruling for a ten day period. Under these conditions, the case would be sent to Washington. The ruling became effective in ten days unless before that time the NWLB approved it or indicated that it would formally review it.⁶⁰ Eight months later the rules were again modified to provide that a regional board ruling in a voluntary case would be stayed for the ten day freeze period only by two public members of a regional board.⁶¹ Under these rules it was

⁵⁴ Carroll R. Daugherty, Wage Stabilization Director, to William H. Davis, Chairman, Memorandum, Subject: "Review of Regional Decisions in Washington," dated February 16, 1943.

⁵⁵ Lloyd K. Garrison, Executive Director, to Chairmen, Regional Boards, Memorandum, No Subject, dated March 5, 1943; see also Executive Secretary, NWLB, to Board Members, Memorandum, Subject: "Procedure on Rules of Regional Board Decisions," dated March 8, 1943.

⁵⁶ Lloyd K. Garrison, Executive Director, to National Board, Memorandum, No Subject, dated March 19, 1943; also Executive Secretary, NWLB, to Board Members, Memorandum, Subject: "Procedure on Rules of Regional Board Decisions," dated March 8, 1943.

⁵⁷ *Verb. Trans.*, February 18, 1943, p. 364.

⁵⁸ *Verb. Trans.*, February 24, 1943, p. 274.

⁵⁹ *Ibid.*, p. 181.

⁶⁰ Lloyd K. Garrison to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Jurisdiction and Procedure of Regional War Labor Boards," dated May 24, 1943.

⁶¹ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Amendments to Sec. 802.37 of Board's Rules of Procedure," dated February 5, 1944.

possible to suspend only those parts of a ruling to which the two public members had objected. In April 1944, this same prerogative of freezing the regional board's decision was applied to the wage issues in dispute cases.⁶² The intent of the freeze of a regional decision by two public members was to prevent the industry and labor members from "ganging up" to violate wage stabilization policy. Its use was limited in practice because the public members had to consider regional board morale and their personal relations with the industry and labor members.

(5) POST REVIEW

When the automatic pre-review under the ten day freeze provision ceased being used, the NWLB set up a system of post-review of voluntary cases. Initially all case files were sent to Washington. Later, when a sample system of review was begun, the National Board selected the cases it wanted to post-review from a statistical face sheet that was filled out for each voluntary case.⁶³ The National Board selected four types of cases and then reviewed, from each region, every fifth of each type case it had selected.⁶⁴ In the Washington office the job of regional review was assigned to the Case Analysis Branch of the Wage Stabilization Division until early in 1944. At this time the function of regional review was transferred to the Program Appraisal Branch, whose sole job was review of regional policies. The transfer resulted in more emphasis being placed on formal review. National Board staff members indicate that review and control of regional case decisions were more effective before the system of post-review was initiated, because communication between the regional and national levels was more informal.

(6) WRITTEN INSTRUCTIONS

The job of keeping regional boards abreast of National Board policy was difficult. The NWLB sent the regions copies of its formal *Minutes* regularly. All press releases of the Board were also sent to the regions. Regional panel members at one time were kept informed through these press releases, but this practice was discontinued because of budgetary limitations.⁶⁵ The National Division of Public Information summarized the expository reports of the regions in the form of the "Newsletter" and sent it to the regions for informational purposes. From March 10, 1943, to August 25, 1944, the "Newsletter" was weekly. Beginning

⁶² T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Pre-Review of Wage Issues in Dispute Cases," dated April 1, 1944.

⁶³ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Changes in Procedure for Forwarding Voluntary Application Cases to Washington for Post Review," dated February 4, 1944.

⁶⁴ A random sample method of review is used in the administration of the Grain Standards Act. See D. B. Truman, *op. cit.*, p. 106.

⁶⁵ Sylvester Garrett, RWLB III, Regional Chairman, to NWLB, Memorandum, Subject: "Report of Regional Board III Activities for Week Ending September 17, 1943," dated September 18, 1943.

on September 6, 1944, it was issued in a monthly series. For a short time in 1943, the NWLB mimeographed a "Digest" of significant regional board activities. In January 1945, the first of several issues of "Policy Development of Board Agencies" was prepared by the Program Appraisal and Research Branch.

In the first days of decentralization the NWLB issued many of its formal policy decisions by General Orders. Some of these released Board authority to other governmental agencies, and others were standards of guidance for regional boards. At this same time the Board began the practice of issuing Administrative Orders, which were intended only for the Regional Directors' office use.⁶⁶ In December of 1942 the Executive Director attempted to get the Board to standardize the form in which it issued its orders. He recommended three types of Board action: First, statements which were to be issued jointly by the Board and by the Bureau of Internal Revenue; second, "regulations" which were important enough to be made public; and, third, "resolutions" which were to relate to housekeeping matters not of sufficient importance to warrant publishing.⁶⁷ There were to be no more General Orders. These recommendations were formally adopted by the Board, but the system neither was adhered to, nor was any attempt made to implement it.⁶⁸

Administrative Orders, which grew to be eight in number, were not abolished until a complete *Manual of Operations* had been issued.⁶⁹ The *Manual of Operations* had been in the process of preparation for some time prior to its issuance. Its delay is attributable to difficulties of compilation and of tripartite clearance.⁷⁰ After the issuance of the Manual, there were two formal methods of distributing general information and orders to the regional boards.⁷¹ Field Memoranda were numbered and were supplements to the general and continuing regulations contained in the *Manual of Operations*. Field Circulars were unnumbered and contained information that was not of lasting importance. They included "items of 'spot' interest" and "reminders."

Speed of communication between the national and regional offices occasionally presented a problem. In spite of the fact that the national office attempted to keep the regions informed by sending most of its releases by airmail,⁷² delay in receiving them was a constant complaint.

⁶⁶ *Verb. Trans.*, December 14, 1942, p. 75.

⁶⁷ *Verb. Trans.*, December 22, 1942, pp. 301 f.

⁶⁸ *Loc. cit.*

⁶⁹ T. W. Kheel, Executive Director, to The Staff—Washington and the Field, Memorandum, Subject: "Administrative Orders 1 through 8," dated May 25, 1944.

⁷⁰ B. Z. Kile, Chief, Procedure and Control Branch, NWLB, to William H. Davis, Chairman, Memorandum, Subject: "Proposed Manual of Operations," dated July 13, 1943.

⁷¹ T. W. Kheel, Executive Director, to The Staff—Washington and the Field, Memorandum, Subject: "Memoranda to the Field," dated July 27, 1944.

⁷² Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Distribution of Press Releases from Washington," dated March 1, 1943.

Regional boards maintained that they often received news of changes in Board policy through the newspapers. They had not received the formal changes before they were besieged with the public's questions.⁷³ Many of the messages sent by teletype were both delayed and garbled.⁷⁴ The delay in the regions' receiving the National Board's press releases and opinions was so great that many regions made effective use of the commercialized daily labor services. Occasionally communication was made difficult because the procedural channels for the flow of information would bog down, and regions would be reprimanded for not following instructions that they had never received.⁷⁵ Communication by telephone was restricted because of budgetary limitations.⁷⁶

In the mature days of the Board, it was characteristic not to alter internal operating procedure without consulting the regional boards as to the practicality of such changes.⁷⁷ This procedure was also followed, but to a lesser extent, when general directions on the Board's substantive policy were changed.⁷⁸ In many cases, however, the regions were instrumental in formulating policy.⁷⁹ An opportunity for the re-

⁷³ Examples of these criticisms may be found in J. A. Hoskins, RWLB VII, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, "Report of Regional Board VII for Week Ending June 26, 1943," dated June 26, 1943; Lewis M. Gill, RWLB V, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Weekly Report on Regional Board Activities," dated August 28, 1943; NWLB, "Newsletter," September 4, 1943, p. 1; and Dexter Keezer, Public Member, NWLB, to Board Members, Memorandum, Subject: "Report on Western Trip," dated July 15, 1944.

⁷⁴ Lloyd K. Garrison, Executive Director, to All Regional Chairmen, Telegram, dated May 14, 1943.

⁷⁵ For example, see M. T. Van Hecke, RWLB IV, Regional Chairman, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Memorandum of September 21, 1943," dated September 25, 1943; J. W. Greenwood, Jr., Director, Division of Administrative Management, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Form of Rulings by Regional Wage Stabilization Directors," dated September 27, 1943; Crosetto and Jacobson, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Atlanta," dated December 11, 1943; and NWLB, Regional Attorneys' Meeting, "Agenda for Discussion," dated October 15, 1943.

⁷⁶ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Telephone Calls to Washington from Regional Offices," dated September 30, 1943.

⁷⁷ See W. R. Little, Director, Division of Administrative Management, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report of the National Conference of Regional Directors of Administrative Management," dated June 29, 1945; Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Proposed Rule Relating to Reconsideration of Directive Orders," dated October 15, 1943; T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Appeals: Requests for Comment on Proposed Standard Procedure," dated June 30, 1944; and NWLB, "Newsletter," June 16, 1944, p. 13.

⁷⁸ Compare *Verb. Trans.*, May 17, 1943, pp. 28 f; Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Attached Memo from Sylvester Garrett," dated October 16, 1943; and T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Proposed Memo Regarding General Order No. 31," dated April 8, 1944.

⁷⁹ *Verb. Trans.*, May 31, 1943, p. 150.

gions to participate in the program compensated in part for the orders that were thrust upon them. Often when regional opinion was requested, the National Board had difficulty discerning the opinion of the regional operating divisions as distinguished from that of the public members and that of the industry and labor members.⁸⁰

There was no specific form to the Board's general and specific memoranda to the field. Occasionally the purposes of the memoranda were cited; as often, they were not. Official memoranda to the regional boards were seldom written in terms of *orders*. Rather they were couched in language that was at times merely suggestive. "It would be most advisable that . . ." and "It is our feeling in such cases that . . ." were typical phrases used to begin instructions to the field.⁸¹ Construction of orders and suggestions was so similar that regional boards frequently mistook one for the other.⁸² Many orders were written in such vague and general terms that they were not even understandable to some National Board members.⁸³ In part, this system was a conscious attempt by the National Board to allow the regional boards to exercise a limited amount of discretion and to give them a feeling of importance within the general program. It occasionally backfired when regional boards took advantage of the permissive nature of Board memoranda to act beyond the scope of Board policy. Having acted, the regional board when questioned could always defend its position by reference to the suggestive or permissive manner in which the memoranda were framed.⁸⁴

The methods and techniques of supervision and control used by the National War Labor Board were many and varied. But methods and techniques can substitute neither for effective delegation of power with criteria for its application, nor for effective organization for supervision and control.

⁸⁰ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Requests for Comments from Regional Boards," dated July 28, 1944.

⁸¹ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Interpretation of Board's Decision in J. Greenbaum Tanning Co. . . .," dated November 6, 1943; and Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Approval of Existing Schedules," dated July 20, 1943.

⁸² *Verb. Trans.*, Regional Conference, April 17, 1943, p. 127.

⁸³ See *Verb. Trans.*, Tripartite Division of the Atlanta Regional War Labor Board, January 13, 1944, p. 94.

⁸⁴ *Verb. Trans.*, Division A, November 14, 1944, p. 46; and *Verb. Trans.*, Telephone Conversation between Carroll Daugherty, NWLB, Wage Stabilization Director, and Byron Abernethy, RWLB VIII, Wage Stabilization Director, April 26, 1944. Compare the experience of the Office of Price Administration in E. S. Redford, *op. cit.*, p. 138.

CHAPTER XIV

MULTIPLE SUPERVISION, CONTROL, AND CONFUSION

... People from the Regions call up constantly. They say, "What do we do in a situation of this sort?" They may call me or they may call Jesse [Freidin] or they may call Carroll [Daugherty], and, trying to be helpful, we'll tell them what we think. We may even send a wire. Very frequently that document we send out or the advice given over the phone, is taken to be official by the person who receives it, and he in turn goes to the Board and says, "This is what the National Board told me," and a fight immediately ensues in the Regional Boards as to whether or not the National Board has said this or whether this is the position of the National Board.

—Theodore W. Kheel, Executive Director, NWLB, in Verb. Trans., Division B, February 22, 1945, p. 23.

We reiterate that we have a deep resentment against the Director of Wage Stabilization of the National Office in projecting his views into the Regional Boards, particularly in such a fashion as to dominate perhaps some of the actions of the Regional Boards without giving any consideration to the ability of some of the Regional Boards to use their own reasoning.

—Samuel C. Evett, RWLB VI, CIO Member, Verb. Trans., January 19, 1945, p. 17.

Organization for supervision and control of field offices is among the hotly debated topics of public administration. From a different preconception, from a somewhat different analysis, and from a study of a different agency in action, each organization theorist almost necessarily either uses old words of the professional jargon to describe his own conclusions or coins new phrases to present his discoveries. As a result, it becomes almost meaningless initially to label the relationship between the central office and the field offices. What actually is—or was—must first be described.

TYPES OF FIELD ORGANIZATION

There are three basic organizational arrangements through which a central authority supervises and controls its field offices. First, each functional division at the national level may have its own field offices, each possessed with different authority.¹ Lines of control and supervi-

¹ A "functional division" at the national level refers to one of the central formal organizational units of an agency. It is a unit that is concerned with part of the work of the major purpose of the agency. It is concerned with some of the work of the "line," although it may not be in the chain of command running from the agency head to the field offices. If the agency of which it is a part is a "line" or "operating" agency, a functional division at the national level performs duties that affect persons or events external to the agency.

In some of the literature, functional divisions are referred to as "staff." The distinction is analyzed and ably presented by John A. Davis, *Regional Organization of the Social Security Administration: A Case Study* (New York: Columbia University Press, 1950), pp. 131 ff.

sion run directly and exclusively from the national functional division to the corresponding regional functional division. Among the various functional divisions in the field, little or no regional coordination or integration is possible, since each national functional division may adopt a different number of regional offices and provide them with different regional boundaries. The Hoover Commission has listed as a deficiency in the federal field service,

Too many separately organized, highly specialized field offices representing individual departments, their bureaus, and even different units of one bureau.²

This type of field organization has been referred to as decentralization by function or by speciality.³

Second, the structure of an agency with many functional divisions at headquarters is duplicated in the field. In this organization lines of authority run from the agency head (or from him through an executive director or field operations division) through the head of the regional office and down to the regional functional divisions. This system permits the coordination of the activities of the various functional divisions in the region and usually results in an economy of internal administration. For this method to perform most effectively, the areal boundaries of the functional divisions in the field must be uniform. This type of field organization has been referred to as decentralization by hierarchy, line and staff, line and function, departmental, military, and unitary.⁴ It is herein referred to as "line and function" decentralization.

The third possibility is similar to the second. Organizational structure is basically identical. The structure of a central agency with many functional divisions is duplicated in the field. However, under this system "lines of authority in the organization are frequently dual or even multiple."⁵ The functional division in the field receives general administrative supervision from the director of the area office. The director coordinates and integrates the activities of the various functional divisions under his jurisdiction. In addition, the functional division in the field receives technical supervision from the corresponding functional division at the national level. This type of field organization has been referred to as "dual supervision." When, in addition, lines of authority run from branches of national functional divisions to branches

² The Commission on Organization of the Executive Branch of the Government, *General Management of the Executive Branch* (Washington: Government Printing Office, 1949), p. 42.

³ See W. F. Willoughby, *op. cit.*, pp. 155 f; and A. W. MacMahon, J. D. Millett, and Gladys Ogden, *The Administration of Federal Work Relief* (Chicago: Public Administration Service, 1941), p. 244.

⁴ *Ibid.*, and John A. Davis, *op. cit.*, p. 133.

⁵ A. W. MacMahon, *op. cit.*, p. 266. See also J. D. Millett, "Field Organization and Staff Supervision," in White, *et al.*, *New Horizons in Public Administration* (University, Alabama: University of Alabama Press, 1945).

of regional functional divisions, the term "multiple supervision" has been applied. Professor Redford suggests as a substitute denominator for dual and multiple supervision the term "multilevel supervision, that is, a system in which directory and supervisory responsibilities over field operation were carried out at successive levels in the hierarchy in a given office."⁶ Herein, the term, "multiple supervision" will be used.

The extent to which lines of authority in administrative agencies follow the formal pattern of multiple supervision is questionable. However, the system is widely enough used so that it is not rare or unusual. It has been used by the Social Security Board,⁷ the Army,⁸ the National Labor Relations Board,⁹ the Resettlement Administration,¹⁰ the Works Progress Administration,¹¹ the Office of Price Administration,¹² and the Department of Agriculture.¹³

Washington-regional relationships within the National War Labor Board were confused. Lines of communication, consultation, and direction took several different channels. Some were provided for in official directives; others grew in and around the limitations of the official directives. Since the willingness of any subordinate official to act in any prescribed manner does not depend entirely upon official authorization for direction, the several types of guidance given the regional staff divisions will be considered initially without regard to formally approved relationships.¹⁴

NATIONAL OFFICE ORGANIZATION AND PROCEDURE

Organization charts pictured lines of authority running from the National Board, through the Executive Director, to the regional board, and then down to the regional functional divisions that duplicated the national functional divisions. Shortly after the Board assumed the duty of wage stabilization, it appointed a Director of Field Operations to assist the Executive Director with this work.¹⁵ Within two months, the title was dropped. The former Director of Field Operations became Deputy Executive Director, but he remained primarily concerned with field operations. In this same early period, a Procedure Section was established in the Division of Administrative Management to prepare,

⁶ Emmette S. Redford, *op. cit.*, pp. 125 f.

⁷ Ralph Burton and John Fobes, Division of Administrative Management, Bureau of the Budget, Memorandum, Subject: "Organization of Government Agencies at the Washington level for Supervision of and Service to Field Organizations," dated October 14, 1942; V. O. Key, Jr., *The Administration of Federal Grants to States* (Chicago: Public Administration Service, 1937), p. 219; and John A. Davis, *op. cit.*, pp. 36 ff.

⁸ J. D. Millett, *op. cit.*, pp. 108-111.

⁹ Ralph Burton and John Fobes, *op. cit.*

¹⁰ A. W. MacMahon, *et al.*, *op. cit.*, p. 264.

¹¹ *Ibid.*, pp. 246 ff.

¹² Emmett S. Redford, *op. cit.*, pp. 34, 45, and 75.

¹³ David B. Truman, *Administrative Decentralization*, *op. cit.*, p. 24.

¹⁴ See the comments of H. A. Simon, *op. cit.*, p. 140.

¹⁵ Compare Carroll K. Shaw, *op. cit.*, pp. 45 ff.

review, clear, and coordinate "all procedures and operating instructions for use within the National War Labor Board both in Washington and in the field."¹⁶

In its early days, the National Board itself, in its formal sessions, attempted to decide all problems of, and instructions to, the regional boards. Later the Board used a staff committee to prepare some policy decisions for regional guidance. Until the latter part of May 1943, all work of the staff committee had to be approved by the National Board itself. At that time the pressure of work was so great that the Board authorized "the Staff Committee on Regional and Board matters with the unanimous approval of the industry and labor members thereof to act for the Board on all policy matters except those of such general importance that they clearly ought to be acted on by the Board."¹⁷ The Executive Director himself was to decide what matters required Board attention. The staff committee was composed of the Executive Director, the General Counsel, the Director of Wage Stabilization, the Director of Disputes, the Director of Administrative Management, one industry Board member, one CIO Board member, and one AFL Board member. The chief of the Procedure Section of the Division of Administrative Management also served, but had no vote.

In mid-November of 1943, the authorization for the staff committee was reaffirmed, but narrowed in scope. The Board resolution provided that the committee "with the concurrence of the Executive Director, is authorized to act for the Board on administrative and *minor* policy matters affecting the Board's field operations."¹⁸ Under this resolution, the committee might act only by unanimous vote and was to report promptly all its actions to the Board.¹⁹

At the turn of the year the relationship between the staff committee and the Board itself was altered by the interposition of a tripartite Executive Committee. This committee interpreted the staff committee's duties as extending to "instructions on administrative and minor policy questions to *one or other of the divisions* of the regional boards; interpretations or minor modifications of the wording of General Orders; amendments to rules of procedure relating to the handling of Regional Board cases; and so forth."²⁰ It further provided that when

¹⁶ NWLB, General Memorandum No. 7, to All Officers and Employees, Subject: "Preparation, Review, Clearance, and Publication of Procedures," dated December 31, 1942. See also L. K. Garrison, Executive Director, to Regional Chairmen, Memorandum, Subject: "Relationship between Regional Boards and the National War Labor Board," dated February 25, 1943.

¹⁷ Lloyd K. Garrison, Executive Director, to Staff Committee on Regional and Board Matters, Memorandum, No Subject, dated May 26, 1943.

¹⁸ Adopted November 9, 1943.

¹⁹ NWLB, Executive Committee, to National Board and Staff Members, Memorandum, Subject: "The Functions and Relationships of the Committee on Regional Instructions and Memoranda, and the Executive Committee of the Board," dated December 31, 1943.

²⁰ *Loc. cit.* I have supplied the italics.

the staff committee was not unanimous on a question, it would be submitted to the Executive Committee. The staff committee lost additional authority after V-E day when a tripartite administrative committee took over the staff committee's previous jurisdiction over "administrative management operations." The staff committee retained its policy interpreting functions.²¹

The Staff Committee on Regional Instructions, as it came to be called, met regularly on Monday mornings. The director of the division sponsoring a resolution would present it to the committee.²² Discussions in sessions of the committee were informal, and many suggestions were hotly debated. When the committee agreed on policy, the decision would be communicated to the regional boards or their divisions by the Executive Director in a formal memorandum. When the staff committee acted upon a specific request of a regional board, the Executive Director would write a letter informing the region of its action. The regional boards were often resentful of being guided by instructions of the staff committee. They greatly preferred that the National Board itself act upon their peculiar problems. Especially was this so when the staff committee refused a request of a regional board.²³

POSITION OF THE REGIONAL CHAIRMAN

Although the relationship may not be viewed on an organization chart, there were clearly established lines of authority between the National Board and the chairmen of the regional boards, as opposed to the regional boards themselves. In talking about the activities of the various regions, the members of the National Board referred to the regional board chairmen as if they alone were responsible for the activities of their boards. Even though the chairman might not have been sitting when a regional board decided a case, the National Board held him accountable for the regional board decision. When the National Board disagreed with a regional board policy, it became common practice to "wonder what 'Jones' [Chairman] is doing down there." National Board dependence upon the regional chairman himself was, in part, a hangover from the early days when the regions were in charge of single directors. Indeed throughout the course of NWLB history, National Board members referred to regional chairmen as regional directors.

In its routine activities the National Board demonstrated its regard for the special position of the regional chairmen. In contrast to the position of most chairmen of national independent regulatory commissions,²⁴ the power and influence of the regional chairmen were not kept

²¹ NWLB, Field Memorandum No. 138, Subject: "Administrative Committee of the National Board (tripartite)—Organization," dated August 10, 1945.

²² Carl Schedler, Chairman, Committee on Regional Instructions, to Lloyd K. Garrison, Executive Director, Memorandum, Subject: "Rules of Procedure for Committee on Regional Instructions," dated November 15, 1943.

²³ As an example, see *Verb. Trans.*, Division B, July 5, 1944, p. B-73.

²⁴ Robert E. Cushman, *op. cit.*, p. 749.

at a minimum. Formal and informal attempts were made to strengthen the regional chairmen's position. General memoranda to the field were addressed to the regional chairmen. Whenever the National Board wished to consult with the regional boards on policy, the regional chairmen would be the first to be called in to Washington. The chairmen were classified one CAF grade higher than other members of the boards. The chairmen were the only regional board members who were rated for efficiency in Washington, and they rated all other full-time members.²⁵ The only one of the regional positions that was originated in and was journalized in Washington was that of the chairman.²⁶ The chairmen might take leave upon their own signature.²⁷

The job description of the regional chairmen gave them a special position. The regional chairman, the Board resolved,

Serves as Chairman of the tripartite Regional War Labor Board with *full responsibility* under the rules and policies of the National War Labor Board for the executive direction of the wage and salary stabilization program and the adjustment of the disputes program. Presides at meetings of the Regional Board and participates in discussions and decisions. Plans, *directs*, and coordinates the activities of the divisions within the Regional War Labor Board with *full authority* for the appointment of personnel subject . . . [to certain limitations] . . . and subject further to the approval by the Regional War Labor Board . . . [for certain jobs.] Has final executive direction of all personnel and the expenditure of funds for the divisions within the budgetary limitations prescribed by the National War Labor Board.²⁸

By contrast, the NWLB "Rules of Organization and Procedure" read, "The staff shall be under the general supervision of the Regional War Labor Board."²⁹ At the same time that this authority was given to the regional chairmen and not to all the board members, they still had only one vote when their boards met in executive session. And the chairmen recognized that to a great extent the National Board looked upon them to guide their regional boards.³⁰

The oft-repeated statement of National Board members that the regional chairmen were responsible for "administration" in reality meant that the chairmen were responsible for "internal" administration. The chairmen were not formally responsible for "external" administration except insofar as they could cast one vote at board meetings and insofar

²⁵ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Plans for Efficiency Ratings . . .," dated February 16, 1944.

²⁶ NWLB, *Manual of Operations*, Section 6301.

²⁷ Lloyd K. Garrison, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Leave for Regional Chairmen," dated September 14, 1943.

²⁸ NWLB, *Resolution*, dated August 12, 1943. I have supplied italics.

²⁹ Dated March, 1945.

³⁰ For example, see M. T. Van Hecke's comments in *Verb. Trans.*, Tripartite Division of the Atlanta Regional War Labor Board, January 13, 1944, p. 79.

as their position gave them personal influence. Even on matters of internal administration, regional chairmen had difficulty maintaining their responsibility.³¹ The effectiveness of the regional chairmen depended more upon their own personalities and individuality than on the written authorization under which they operated.³²

POSITION OF THE REGIONAL GROUP REPRESENTATIVE

The supervision resulting from the communication of the National Board group representatives to their respective regional board group representatives and from extra-agency groups (such as unions) to the regional board group representatives accounted for some decisions made by regional board members.³³ The labor and industry members occasionally expressed resentment when the National Board or one of its divisions would call the regional board public members to obtain information or to give instructions, but never called them.³⁴ Industry-to-industry and labor-to-labor communications and instructions were frequent.³⁵ For industry and labor representatives, the "advice" from the Washington groups and from extra-agency sources filtered down to the tripartite hearing panel level.

Group-to-group communication from national to regional levels allowed subordinates of the Board actively to advocate changes in overall Board policy. Because of the vertical group loyalties inherent in the tripartite structure, general supervision and control was made more difficult. A National Board group could, and did, encourage its respective regional board group to act contrary to National Board case decisions. This group-to-group advice and guidance was early recognized. One regional chairman wrote:

Roger Lapham's [an employer member's] letter of March 18 "To all Employer Members" raises a problem that I think should be considered. I am not attempting to suppress in any way Roger's unchallenged right to

³¹ For a conspicuous example, see RWLB X, "Procedure for Selection of Arbitrators," dated March 13, 1945; RWLB X, "Statement of Public Members Regarding Procedure for Selection of Arbitrators . . .," dated March 20, 1945; and RWLB X, "Statement of Majority on Selection of Arbitrators . . .," dated March 23, 1945.

³² See William Brody, Personnel Director, to W. R. Little, Director, Division of Administrative Management, Memorandum, Subject: "Visit to Atlanta Office," dated April 21, 1945; and William Brody, Personnel Director, to W. R. Little, Director, Division of Administrative Management, Memorandum, No Subject, dated July 2, 1945.

³³ See, as examples, RWLB I, CIO, "News Bulletin," Vol. I, No. 1, not dated; RWLB II, CIO, "Newsletter," dated April 1944; RWLB II, "American Federation of Labor Report," no date, prepared at termination of the RWLB; and RWLB II, CIO, "Newsletter," dated June 1944.

³⁴ RWLB VI, *Verb. Trans.*, January 19, 1945, p. 42.

³⁵ Benjamin C. Sigal, Assistant to CIO Members, NWLB, to CIO Regional Board Members, "Weekly Letter," No. 7, dated September 18, 1943; and H. Buckman, RWLB V, Industry Assistant, to Members of Industry Section, RWLB V, Memorandum, dated August 7, 1944, are effective examples of labor and industry group supervision. This relationship is discussed in Chapter VII.

freedom of speech and of press, but I do feel that private communication to one branch of a Regional Board either with reference to application of policy or with reference to particular cases should be very much the exception and even then should be discouraged. I am sure I speak for all the Regional Chairmen when I say that we have striven unceasingly to have our Boards act as a unit, that is, to have them all take the view that they are representing the public as one Board rather than three divisions, each representing a particular group. . . . I feel that any communication by one group to its confreres on the Regional Boards tends to create a feeling of separateness rather than of unity. In short, I am not talking about what Roger had to say as much as I am of the possibilities that may arise from communications "to Employer Members from Employer Members." I fear it may tend to destroy much of the feeling of unity and create in its stead a feeling of division loyalty.³⁶

In spite of this early admonition, group-to-group advice developed and flourished.

POSITION OF THE REGIONAL DIVISIONS

The lines of authority between functional divisions (and some offices within these functional divisions) of the regional war labor boards on the one hand and the regional boards themselves, the National Board, and the staff divisions of the National Board on the other hand were clear only on the organization chart. Here heavy black lines ran from the National Board, through its Executive Director, to the regional board and then down to the regional functional divisions. The organization chart showed a simple line relationship. In fact, this relationship was much more complicated. The regional functional divisions at times accepted guidance from Washington both through the NWLB Executive Director and through the national staff divisions. Within the regions the functional divisions accepted guidance from the regional chairmen, the regional boards, and individual group representatives on the boards.

It has been pointed out that the job description of the original chairman indicated that he alone had "full responsibility," "full authority," and "final executive direction" over the divisions of his regional board. It has also been pointed out that the regional staffs were to be under the general supervision of the regional war labor boards.³⁷

However, the job descriptions for the directors of the national staff divisions gave them responsibility for their corresponding divisions in the regions. In addition, this division-to-division relationship was indicated in a general memorandum which read,

... The Director of the National Division is responsible for the proper functioning of the division corresponding to his in each Regional office. . . .

³⁶ J. A. Hoskins, RWLB VII, Regional Chairman, to L. K. Garrison, Executive Director, "Report of Regional Board VII for Week Ending April 3, 1943," dated April 3, 1943.

³⁷ "The staff shall be under the general supervision of the Regional War Labor Board." NWLB, "Rules of Organization and Procedure," dated March, 1945.

All communications should be directed to the Division Director for those matters over which he has jurisdiction.³⁸

Not only were division-to-division relationships envisaged in this general manner, but a series of memoranda indicated specific divisional responsibilities.

Though an order from Washington imposed a direct relationship between a national division and its corresponding regional division, the document prescribing it might be transmitted under the name of the Executive Director or under the name of a member of a functional division. Generally, such documents were signed by the Executive Director.

THE ADMINISTRATIVE MANAGEMENT DIVISION

Several memoranda indicated the direct responsibility of the regional director of administrative management to the National Board or to the National Division of Administrative Management. The National Board Chairman delegated directly to the regional directors of administrative management authority to make appointments and to handle other personnel transactions. In the same authorization the *regional chairmen* were "delegated similar authority for use in the absence of the Regional Director or Acting Director of the Division of Administrative Management."³⁹ It was the "responsibility of the regional administrative officer to apportion positions within the region, [and] to give budgetary authorization for filling individual positions. . . ."⁴⁰ The director of administrative management in each region had the responsibility of setting up efficiency rating committees.⁴¹ When a transfer of station for Board personnel was involved, the regional administrative officer was to determine who was to pay the expense of transporting his household goods.⁴² The National Personnel Officer delegated directly to the personnel technicians of regional boards responsibility for performing certain functions.⁴³ The official position description of the Chief of the Administrative Management Division in Washington read:

. . . Has full responsibility . . . for formulating, planning, directing and controlling the administration management of the agency in Washington

³⁸ Theodore W. Kheel, Executive Director, to Regional Chairmen and Division Heads, All Regions, Memorandum, Subject: "Organization of the National Board," dated February 17, 1944.

³⁹ National War Labor Board, to All Regional War Labor Board Administrative Officers, Teletype, dated April 15, 1943. See also W. H. Davis, Chairman, NWLB, to The Comptroller-General, Letter, dated July 16, 1943.

⁴⁰ NWLB, *Manual of Operations*, Section 6301.

⁴¹ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Plans for Efficiency Ratings. . . ," dated February 16, 1944.

⁴² NWLB, *Manual of Operations*, Section 6305.8.

⁴³ A. E. Weatherbee, Personnel Director, NWLB, to All Administrative Officers, Regional War Labor Boards, Attention: Personnel Technicians, Field Personnel Memoranda. These memoranda are fifteen in number and cover the period April 21, 1943, to July 14, 1943.

and the field. . . . Has complete and final responsibility for the writing and issuing of procedural plans, budgeting, fiscal and general administrative services for departmental *and regional programs.*

Is available for consultation with the Administrative Management Directors in the Regional Offices on difficult problems, *making final decisions in controversial questions.*⁴⁴

The duties that were imposed directly upon the regional directors of administrative management and that apparently by-passed the regional boards concerned internal administration.⁴⁵ Control over regional administrative management was usually imposed on matters in which the discretion of the NWLB was limited by other agencies, such as the Civil Service Commission or the Bureau of the Budget, or where legislation was involved.

THE DISPUTES DIVISION

Within the National Disputes Division, the Assistant Director was in charge of a Field Liaison Section. The position was created for the purpose of achieving effective relationships between the National Board and the regional boards. It was specifically "requested that Regional Chairmen *and* the Regional Disputes Directors take up with Mr. Garman [Assistant Director of the National Disputes Division] *directly all matters of general disputes policy or procedure as well as questions arising in particular cases.*"⁴⁶

THE WAGE STABILIZATION DIVISION

The question "To whom are the regional divisions responsible, and to what extent?" became an issue primarily in regard to wage stabilization. Magnification of the problem in the wage stabilization divisions arose because of the historical growth of the divisions, because of their instructions being more detailed and more technical, and because of the man who was the National Wage Stabilization Director. Carroll R. Daugherty was a competent and widely respected economist. Beginning service with the Board during the early days of wage controls, he grew with the stabilization policy and was instrumental in framing much of it. Daugherty, as compared to members of the National Board, was an ardent advocate of a relatively rigid stabilization policy.⁴⁷ And his

⁴⁴ NWLB, Position Classification Files of Approved Position Descriptions. These files are now in the U. S. Department of Labor. My italics.

⁴⁵ It is recognized that an administrative management division is not a "functional division" as defined in Footnote 1 of this Chapter. However, the problems of supervising regional administrative management divisions are basically the same as those of supervising regional functional divisions.

⁴⁶ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards and Commissions, Memorandum, Subject: "Improved Liaison between National and Regional Disputes Divisions," dated July 7, 1944. I have supplied the italics.

⁴⁷ This statement is not to be interpreted to mean that Mr. Daugherty was, in any sense, "anti-labor." His reputation for impartiality seems to be untarnished in the opinion of former Board and staff members—industry, labor, and public.

force of personality, used from his official position, enabled him greatly to influence the activities of regional wage stabilization divisions. Respect for Daugherty the professional, recognition of Daugherty as Director of the National Wage Stabilization Division, and personal reaction to Daugherty the man resulted in the regional wage stabilization divisions' often accepting his guidance in preference to that of the regional boards and using his advice to act around and beyond the regional war labor boards themselves.

The position description of the National Wage Stabilization Director read, in part:

Under the administrative direction of the Executive Officer, directs the Division of Review, Research and Analysis in Washington *and in the field* in reviewing and passing upon all questions and problems relative to the economic repercussions of the administration of the Wage and Salary Stabilization program.⁴⁸

And the National Wage Stabilization Director fostered the responsibility of regional wage stabilization directors to him. The dilemma in which the regional wage stabilization directors occasionally found themselves is well illustrated in the following quotations from a telephone conversation between Daugherty and a regional wage stabilization director and from a memorandum in which the regional director defends his position. The National Director had learned that the regional board had violated national instructions on methods of setting wage brackets. He telephoned the regional director for further information. The following conversation occurred:

DAUGHERTY: . . . As I say I'm here to lend assistance. I don't get very many calls from your office, but the Directors in New York, Philadelphia, and Chicago call me two or three times a week, and I'm in close touch with them so that if you had only called me when those things started happening I might have been able to do something. I could have gotten Taylor to call McGown [the regional chairman]. *You are responsible to me for those things.* . . .

You couldn't tell the Board what to do, but you could have told me about it.

ABERNETHY: I did this—I pointed out what the instructions were and they were to the Board as well as to me. The instructions also said that the Regional Boards were to exercise their discretion, and I guess they decided to take that more seriously than the other part. . . .

⁴⁸ NWLB, Position Classification Files of Approved Position Descriptions. These files are now in the U. S. Department of Labor. The italics are mine.

At another time it was said that the National Wage Stabilization Director "supervises the largest division of the National War Labor Board with a total of 197 departmental employees and 477 field employees. He has supervisory responsibility for the Wage Stabilization Divisions in each of our Regional offices and Commissions." George Taylor, Chairman, NWLB, to Harold D. Smith, Director, Bureau of the Budget, Letter, dated April 11, 1945.

DAUGHERTY: . . . At the time they were going off the beam you should have let me know.

ABERNETHY: *I probably slipped on that.*

DAUGHERTY: Probably so—that's a flagrant thing. . . . That is what I have been afraid of—but nobody has said it so plainly before.⁴⁹

In defense of his position and as a result of the foregoing telephone conversation, the regional wage stabilization director wrote his regional chairman,

. . . While I was not in complete agreement with the Board's policy of setting bracket minima at the weighted average, I am satisfied that the Board was within its full right to do so. To object further would have been to pit my personal discretion and judgment against that of the Tripartite Board.

First, you will note . . . Mr. Daugherty's statement that I am "responsible" to him for the way in which brackets are set. It has been my impression, since the time I assumed the duties of this position nearly a year ago, that I was fully and solely responsible to the 8th Regional War Labor Board and to you as Chairman of that Board. It has been my further understanding that the Regional Board in turn is responsible, through its Chairman, to the National Board, for the conduct of all War Labor Board work, including wage stabilization.⁵⁰

HISTORICAL DEVELOPMENT

The extent to which national divisions had control over regional divisions grew as a matter of chance. At times the Washington office intentionally refused to answer the \$64 question "Who has the authority?"⁵¹ There is no indication that at any time in the NWLB's history the national division to regional divisions relationships were carefully thought out or that the problems resulting from confused lines of authority were carefully explored. When the problem was discussed by the National Board, Lloyd Garrison, public member and former Executive Director, explained,

. . . The more specific problems of the extent to which a division head has supervision over a particular division of the particular regional board in the field, and the extent to which a division head here may inquire into what the staff of a division in the Regional Board in the field is doing I don't believe have been precisely defined by the Board. I think that's been left to

⁴⁹ *Verb. Trans.*, Telephone Conversation between Carroll R. Daugherty and Byron Abernethy, dated April 26, 1944. Italics mine.

⁵⁰ Byron R. Abernethy, Regional Wage Stabilization Director, to Floyd McGown, RWLB VIII, Regional Chairman, Memorandum, Subject: "Telephone Conversation with Mr. Daugherty," dated May 4, 1944.

⁵¹ See the battle over a national division's authority to influence the appointment of regional personnel in RWLB VIII, "Transcript of Telephone Conversation between Mr. Kheel in Washington and Mr. Madden," dated September 15, 1944; Wiles Madden, RWLB VIII, Regional Chairman, to RWLB VIII, Memorandum, No Subject, dated September 18, 1944; and RWLB VIII, *Minutes*, September 19, 1944.

work it-elf out in a common sense way; and I think up to this point we have not had any misunderstandings or trouble. . . .⁵²

I think it was always the general understanding from the start . . . that if, for example, the head of the Legal Division here felt that things were a mess in the Legal Division in the Regional Board, that it would be his responsibility and duty to inquire into the situation. The action which would be taken, if any action was necessary, would of course have to be Board action. That is to say, the division head here couldn't hire or fire anybody in the Regions.

. . . Every day you get dozens of calls from all over the Regions. The lawyer in Region X has a problem, and he wants Jesse's [the General Counsel's] judgment on it—and he gets it. Now, that day-to-day relationship is absolutely essential; and you can't—Jesse can't—stop and get a tripartite opinion on some legal matter; nor Carroll on some point of procedure in the Wage Stabilization Division.⁵³

In the latter months of 1944 a series of conflicts between regional boards, their divisions, and Washington divisions brought the problem to the National Board itself. The result was an attempt to strengthen line authority. The power of national divisions to "review" the work of the regional boards and their divisions, but not to change "policy, procedure, or practice," was affirmed.⁵⁴ An attempt to tighten control over national staff divisions was made by the Executive Director with the provision that "No memoranda to the field or communication of a *general* instructional nature may be issued to the field unless it bears my signature. This does not apply, of course, to routine correspondence in regard to specific cases."⁵⁵ The relationship between the National Board and its divisions, and the regional boards and their divisions was stated in Field Memorandum No. 94:

Chairmen of Regional Boards . . . as well as Division Directors, frequently write, telephone, and telegraph various individuals in Washington for advice in connection with particular problems. . . .

We do not wish to discourage this practice, since informal advice readily given can undoubtedly help solve many of the pressing problems that come up from day to day. We desire, however, to distinguish between this sort of

⁵² Mr. Garrison had had no time to investigate his point. There had been similar misunderstandings about the allegiance of regional divisions. The two instances illustrated *supra* in the text are partial examples. See also the dispute over common labor brackets in the metal trades industry in J. J. Meyer, Executive Assistant to the NWLB, to Robert Burns, RWLB VI, Regional Chairman, Letter, dated November 16, 1943; the problem of clerical brackets in Region X in *Verb. Trans.*, July 21, 1944, pp. A-792 ff; and Carroll R. Daugherty, National Wage Stabilization Director, to George Taylor, Vice-Chairman, Memorandum, Subject: "Bracket System of the Atlanta Board," dated August 23, 1944.

⁵³ *Verb. Trans.*, Division A, January 16, 1945, pp. 12 ff.

⁵⁴ NWLB to RWLB VII, Memorandum, Subject: "Resolution of the VIIth RWLB to the NWLB Concerning the Current Investigation of its Activities," Not dated. (Probably about January 5, 1945.)

⁵⁵ T. W. Kheel, Executive Director, to All Division Heads, Memorandum, No Subject, dated January 17, 1945. I have added the italics.

informal advice and official pronouncements of the Board. Obviously no single individual can state the official position of the National War Labor Board unless it is on a matter on which the Board has spoken.⁵⁶

"Official statements" were obtainable by writing the Executive Director.

About two months after this reaffirmation of line authority, strict adherence to the general principle was formally abandoned with respect to the administrative management division. In the memorandum effecting the change, an attempt was apparently made formally to establish multiple supervision.

All personnel attached to the Divisions of Administrative Management in the field will continue to be *administratively responsible* to the National Director of Administrative Management as heretofore. This includes personnel technicians who while *technically responsible* to the National Personnel Director, report to the Regional Director of Administrative Management.⁵⁷

The series of directives and conferences in early 1945 that had attempted to strengthen the line authority and relegate national functional division to regional functional division relationships to an advisory and informal status accomplished no great changes. The work of divisions of the regional boards and of the divisions of the National Board continued as it had previously. To the extent that these conferences and directives shed light upon existing relationships and to the extent that they brought the conflict out into the open, the relationships between the national divisions and the regions improved. Knowledge often proves to be the best umpire. Also these relationships tended to be softened. A recognition of the sensitivity of the regional boards and their divisions tended to cause the national divisions to be more temperate in words and actions. The regional boards' knowledge of the proper functions of the national divisions also tended to make the regions less sensitive. But the formal directives accomplished no fundamental changes.

REASONS FOR CONFUSION

Throughout the existence of the National War Labor Board, the regional boards were jealous of their power over their divisions. Almost any national division activity that affected the field was greatly criticized. The National Wage Stabilization Division was the special target. It was criticized both for the activities it undertook and for the

⁵⁶ NWLB, Field Memorandum, No. 94, Subject: "Official National War Labor Board Instructions and Interpretations," dated February 23, 1945. See also Adele Chudzik, Recording Secretary, "Resolution of the Meeting of the National War Labor Board," Division B, dated February 22, 1945.

⁵⁷ T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Reorganization of the Office of the Executive Director," dated May 4, 1945. See also W. R. Little, Director, National Division of Administrative Management, to T. W. Kheel, Executive Director, Memorandum, Subject: "Report on National Conference of Regional Directors of Administrative Management," dated June 29, 1945.

manner in which it undertook them. Some regional board members resented the National Wage Stabilization Division's requests for delays in panel hearings on wage brackets so that a representative of the national division could be present at the hearing.⁵⁸ Regional boards objected to the manner in which national division representatives conducted themselves when visiting the regional offices. They charged that the representatives presented themselves directly to the regional divisions, rather than to the regional boards.⁵⁹ They resented their activities being investigated by persons "frequently lower than the position level of regional board members." They thought it unfortunate that there was no *direct relationship* between the regional boards and the National Board.⁶⁰ National division supervision, they maintained, produced dissension among regional divisional employees, because they did not know whom to obey—the regional board or the national division. It made difficult the recruitment of board members of high caliber, "if they believe that they are in fact window-dressing for administrative departments of a Government agency which claims to be tripartite but in fact is not."⁶¹ Regional board members charged that the activity of the national division "indicates an absence of complete trust in our own administrative officials and also an absence of considerable good will toward the Regional Board."⁶² They argued that if wage bracket determinations were to be reviewed by the National Wage Stabilization Division then there would be no need for the tripartite boards.⁶³ Any attempt to review the work of regional division was, in effect, challenging the essential authority of the regional board.⁶⁴

From the very first days of the regional war labor boards, their divisions (especially the wage stabilization divisions) failed to achieve the subservience that the lines of authority on the organization chart indicated.⁶⁵ Wage stabilization divisions tended to regard themselves as autonomous within the regional board organization.⁶⁶ This relationship arose as a result of the historical growth of the regions. The work of wage stabilization had been decentralized first, and the initial jurisdiction of the division to act finally had been given to it directly from the National office. From the beginning there fell to the wage stabilization division the job of educating the new board members on wage stabilization policy, since—for the most part—they were *per diem*

⁵⁸ *Verb. Trans.*, Division B, January 11, 1945, pp. 173 ff.

⁵⁹ RWLB VII, Resolution, Subject: "Concerning the Current Investigation of its Activities," dated December 13, 1944.

⁶⁰ *Loc. cit.*

⁶¹ *Verb. Trans.*, Division A, January 16, 1945, p. 8.

⁶² *Ibid.*, p. 18.

⁶³ RWLB VI, *Verb. Trans.*, January 19, 1945, p. 24.

⁶⁴ RWLB II, CIO, "Newsletter," July, 1944. This is an effective summary of the effect of the National Wage Stabilization Division's policies on regional divisions and of an extreme attitude toward it.

⁶⁵ *Verb. Trans.*, May 20, 1943, pp. 77 f.

⁶⁶ *Verb. Trans.*, March 17, 1943, p. 551.

non-professional transient employees. As Board policy changed and became more technical, the job of guidance *up* the scalar chain within the region became more necessary, if national policy were to be effected.⁶⁷

The degree of separateness of the regional divisions from their respective regional boards was aggravated because of the nature of the personnel of the divisions and of the boards. Staff personnel had a professional approach. Staff members were more accustomed to understanding general rules and to applying them to the specific factual situations of board cases. Staff members tended to follow the literal intent of Board case policy and instructions, to see inflation as a grave threat, and to make decisions without regard to program politics. Professional kinship thus provided a strong bond between regional and national divisional personnel.

On the other hand, regional board members tended to be guided more by the expediency of the moment than by a strict following of the National Board's stated policy. The industry and labor members were never too greatly concerned about operating within the scope of delegated policy, unless such operation aided their preconceived purposes. The public members of the regional boards were generally men capable of professional activity. However, since they were operating with the handicap of tripartitism, they found it necessary to compromise their own objectively determined conclusions. Indeed regional board operation and management were usually more harmonious when the public members were capable of and willing to compromise. In this manner, more to effect the intent of stabilization might have been achieved. From the point of view of the wage analyst, decisions of regional boards were reached by political maneuvering and by majority vote, regardless of the Board's enunciated policies. Thus the divisions attempted to thrust professional standards upon the boards and to "educate" them.

SUMMARY

The organizational plans of the National War Labor Board were never intended to embody a system of multiple supervision and control. Even though some of the Board's formal documents indicated the existence of multiple supervision, this system of functional control was never intended.⁶⁸ The NWLB envisaged its functional divisions' giving advice and counsel to the regional functional divisions, but not as having authority to give them direct orders. The National Board through its Executive Director was to exercise authority over and to

⁶⁷ See RWLB XII, *Minutes*, April 25, 1944; and *Verb. Trans.*, Wage Stabilization Conference, July 21, 1944, p. 66.

⁶⁸ Multiple supervision was evidently intended with the Administrative Management Division. See T. W. Kheel, Executive Director, to Chairmen, Regional War Labor Boards, Memorandum, Subject: "Reorganization of the Office of the Executive Director," dated May 4, 1945.

issue orders and commands to the regional boards. The regional boards were to convey these orders to their functional divisions. The national functional divisions were to find out if these orders were properly carried out. The National Board thus thought it had effected an orthodox line and function organization with lines of authority running directly up and down the scalar chain. At the same time, advisory and consultative communication between the national functional divisions and the regional functional divisions was recognized as a necessity. But this relationship was never adequately stated and only late in its history did the NWLB attempt to strengthen the chain of scalar authority.⁶⁹

Partially as a result of this formal vacuum and partially as a result of the creation of the regional war labor boards, line and function organization broke down, if indeed it ever existed in fact. And informal organization effectively—if not formally—created a system of multiple supervision, control, and confusion. The experience of the NWLB indicates that when an agency's organization provides only a confused advisory relationship between national and regional staff agencies, this relationship can develop informally to the extent that a regional board's authority over its own divisions is threatened.

Control and supervision within the National War Labor Board were made difficult by factors other than those resulting from the organizational pattern. It is impossible to supervise and control effectively unless there is first a fairly well-defined policy to execute. Board policy was not well-defined. Delegation of authority to multi-membered agencies presents further difficulties. And these are multiplied when the multi-membered agencies are tripartite in nature. Extra-agency influences greatly affected regional board decisions.

MULTIPLE SUPERVISION: COMPARATIVE PROS AND CONS

The case for multiple supervision was originally stated by Arthur W. MacMahon and John D. Millett. As a result of their studies, they concluded:

The experience of the Works Progress Administration and the Resettlement Administration in decentralizing activities, as well as other experience, suggests that it may be time to develop a new theory of hierarchy, a theory recognizing the reality and justifying the practice of dual supervision. It is no solution to the pressure of specialty to grant it a separate and independent field organization. If coordination through integration justifies the grouping of related activities under a single parent organization at headquarters, then similar advantages may be wanted, even demanded, in the field. . . .⁷⁰

⁶⁹ Compare James W. Fesler, *Area and Administration*, *op. cit.*, p. 83.

⁷⁰ Arthur W. MacMahon, *et al.*, *op. cit.*, p. 265. See also John D. Millett, "Field Organization and Staff Supervision" and Arthur W. MacMahon, "Function and Area in the Administration of International Affairs" in *New Horizons in Public Administration*, *op. cit.*, pp. 96 ff.

John A. Davis lists five advantages of multiple supervision that are applicable to most agencies using the system.⁷¹ First, it makes possible savings in housekeeping functions. Second, "the organization of common specialities on the basis of subject into the functional bureaus . . . [makes] possible the economical decentralization of specialities." Third, it affords centralized control of public relations in the region. Fourth, the regional director is in a position to coordinate the operating relations of the various functional divisions. Fifth, it "provides a means of controlling the rivalry and conflict of constituent units on the regional level." Emmett S. Redford finds multiple supervision somewhat useful "for avoiding the excessive 'spawning' of separate field offices by multi-purpose agencies."⁷² And even Luther Gulick seems to have joined in the plea for recognition of dual lines of authority. Although he recognized that during World War II multiple supervision "resulted in considerable confusion . . . [and] mushroomed out at times into . . . non-integrated supervision,"⁷³ he concluded that, as one of the lessons of wartime administration,

*When geographic dispersal of operations calls for decentralization of an organization, high technical standards and policy uniformity can be maintained by integrated dual supervision.*⁷⁴

Opposed to the theory of multiple supervision is the generally accepted principle that unity of command is a requirement for successful administration. Its advocates recognize that "A single chain of authority, however, does not, and . . . must not mean a single chain of contacts."⁷⁵ The relationship between officials at the national level and their corresponding divisions in the field has been characterized as an "authority of ideas."⁷⁶ Multiple supervision is criticized because it results in a "precarious balance of power" between area generalists in charge of field offices and the functionalists in charge of field divisions,⁷⁷ and because it weakens the supervisory authority.⁷⁸ A Princeton University group studying the Department of Interior concluded,

*Whether or not a regional director has authority on paper, the overall efficiency of a bureau is hampered by confused lines of direction and authority running from specialized headquarters units to the field.*⁷⁹

⁷¹ *Op. cit.*, pp. 42 ff.

⁷² *Op. cit.*, p. 180.

⁷³ Luther Gulick, *op. cit.*, p. 93.

⁷⁴ *Ibid.*, p. 91.

⁷⁵ J. D. Mooney and A. C. Reiley, *Onward Industry!* (New York: Harpers, 1931), p. 509.

⁷⁶ E. W. Smith, "Relation of Organization to Management," in *Administrative Management*, United States Department of Agriculture, Graduate School (Washington: Government Printing Office, 1938), p. 61; see also David B. Truman, *op. cit.*, p. 24.

⁷⁷ James W. Fesler, *Area and Administration* (University, Alabama: University of Alabama Press, 1949), pp. 83 f.

⁷⁸ *Ibid.*, p. 82, and Emmette S. Redford, *op. cit.*, pp. 51 f.

⁷⁹ *A Report on the Field Services of the Department of the Interior*, Prepared by Members of the Faculty and Staff of Princeton University (Princeton, N. J.: Princeton University, September 15, 1950), p. 17.

The Hoover Commission concluded about Federal field services in general that they are characterized by "confused lines of direction and supervision between specialized headquarters units and the field."⁸⁰ And the Federal Security Agency, in considering plans for gradual decentralization at one time clearly rejected the alternative of dual lines of command that it ultimately adopted.⁸¹

The basic problem of determining effective regional organization is that of achieving coordination at the regional level and at the same time taking advantage of the knowledge of the functional specialists at the national level. If these goals can be achieved, then a national policy, with areal modification, can effectively be applied without loss of technical efficiency. The more diversified the functions within an agency, the greater are the problems of coordination.⁸²

The choice between customary line and function supervision and multiple supervision becomes meaningful because of the different activities and abilities of personnel at different places in the hierarchy.⁸³ National division personnel are specialists. Employees of national functional divisions are highly trained technically in narrow avenues of agency problems. They are professionals capable of recognizing general problems and planning methods of coping with them. A national division employee is likely to concentrate upon one or a few special fields within the scope of a narrow subject matter. These officials seldom apply to specific cases the rules they formulate or the methods they devise. They are not acquainted with specific regional conditions or primarily concerned with the regional differentials. Usually removed from the agency's clientele by several intermediary layers, they tend to view problems more in an ideal sense than in the sense of practical application. National division personnel may properly be thought of as "functional specialists."

Employees of regional functional divisions, in contrast to the functional specialists of national divisions, are usually thought of as "generalists." Because not sufficient specialized problems arise, few, if any, regional employees are able to concentrate their abilities upon only one or a few special fields within the scope of a narrow subject matter. They are concerned with applying the general rules and the very specialized knowledge of the functional specialists to specific factual problems. In addition, they have the duty of making the general rules formulated for the use of all regions applicable to the specific conditions in their areas. They are not removed from the agency's clientele. To the contrary, they usually have daily intercourse with it. Sufficient knowledge of areal

⁸⁰ The Commission on Organization of the Executive Branch of the Government, *op. cit.*, p. 42.

⁸¹ Dean Snyder, Elton Woolpert, and Harry Lolland, "Methods and Approaches for Improving Field Coordination with the Federal Security Administration," dated May 20, 1947, Unpublished, pp. 18 f.

⁸² For example, see Dean Snyder, *et al.*, *op. cit.*, p. 27.

⁸³ See Fesler's comments in *Area and Administration*, *op. cit.* pp. 78 ff.

conditions and the practice of applying general policy to a given situation are themselves a type of specialization. Yet a regional employee should have available the technical information supplied by the national functional specialists. The regional personnel of functional divisions may properly be thought of as "area-functional specialists."

The regional director, who in the typical federal agency occupies a position corresponding to that of the regional board in NWLB organization, has the duty of integrating and coordinating the activities of the functional divisions under him. He must possess some broad technical knowledge of the activities of his divisions. Yet he cannot be presumed to have the specialized knowledge possessed by his area-functional specialists. His primary concern is that the divisions under him do not operate at cross purposes, that their objectives and methods pursue the same general goal, that they cooperate when their duties are interrelated. The regional director should be, and generally is, thoroughly familiar with the problems of the region under his jurisdiction. To this extent he is a specialist in area. He guides the agency's purpose to give it meaning within his region. He coordinates the program of his agency with that of other agencies (national, state, and local) performing work in the same and in related fields. It is not to be expected that he could perform with the same, or any, degree of skill the work accomplished by his subordinates. It is suggested that the regional director be thought of as an "area generalist."

By dual or multiple supervision, its advocates seek to gain the advantages of both the highly technical skills available from the national functional specialists without losing the advantages of the coordinating ability and regional knowledge of the area generalist. The suggestion of the necessity of multiple supervision implicitly challenges Leonard White's plea for the establishment of an administrative class.⁸⁴ For if the area generalist is not capable of guiding effectively his subordinates who possess more technical knowledge and ability, the development of an administrative class is indefensible.

CONCLUSIONS

The difficulties of the National War Labor Board, even without formally authorized multiple supervision, shed light on the conflicts that multiple supervision can engender.⁸⁵ The experience of the National War Labor Board indicates that the advantages of multiple supervision

⁸⁴ See *Government Career Service* (Chicago: University of Chicago Press, 1935), pp. 22 ff. Lewis Merriam's counter position is contained in *Public Personnel Problems* (Washington: Brookings Institution, 1938), pp. 314 ff. See the conclusions on the advantages of generally trained administrators in L. C. Gibson, "Techniques for Appraising Agency Top Management," Bureau of the Budget Field Service, Field Service Training Institute, Management Techniques, Unpublished, January 25-February 3, 1945, p. IV-24.

⁸⁵ Compare the difficulties of the Office of Price Administration and the War Production Board in Emmette S. Redford, *op. cit.*, and Carroll K. Shaw, *op. cit.*

can be derived from "advisory staff contacts quite distinct from the central scalar chain of line authority."⁸⁶

In typical line and function decentralization (without provision for multiple supervision), relationships between the national functional specialists and the area-functional specialists do arise and will develop—even if in an unplanned and informal sense. Both type specialists are people—people who have common professional interests, people who talk at regional conferences. And communication, even if of an informational or advisory nature, will affect the activities of the area-functional specialists.⁸⁷ Since technical guidance aids effective administration, these channels ought to develop.

The relationship between the national functional divisions and their counterparts in the field should be carefully defined and formulated. This relationship should be characterized by the power of suggestion, information, advice, consultation, and investigation. Exercise of these powers would not include the authority of the national functional official to use formal sanctions if the subordinate regional officials should fail to accept his suggestions or advice.⁸⁸ These provisions would allow the direct exchange of technical information and procedures. As a result the functional specialists would retain their effectiveness, but would be without authority to issue orders. They would not be without influence for several reasons: first, the position of the national division in the hierarchy; second, respect for the technical knowledge and ability available in the national division; and, third, respect for the *men* who occupy top positions in the hierarchy.⁸⁹ If the national functional divisions are used to appraise the work of the regional functional divisions, the executive director can order the regions to submit the required reports. The scalar chain of authority would then remain undisturbed.

The relationship between the national executive director and the regional director would be one of line authority and would be characterized by control and supervision. Control and supervision refer to the power to enforce or to direct action of subordinates by means of available formal sanctions or methods of employee discipline, *i. e.*, the subordinates would not be allowed to give effect to any choice of alternatives without the expectation of some type of formal discipline.⁹⁰ Control should carry with it a command, a "must."

It is evident that this suggested organizational alternative to multiple supervision constitutes a return to the long respected line and function (customarily called "line and staff" or "hierarchical") decentralization.

⁸⁶ J. D. Mooney and A. C. Reiley, *op. cit.*, p. 512.

⁸⁷ See H. A. Simon, *op. cit.*, pp. 11 f, 125 ff, and 146 ff; J. D. Millett, *op. cit.*, p. 98; D. B. Truman, *op. cit.*, p. 57; and W. B. Donham, "Education in Management," in *Administrative Management, op. cit.*, p. 97.

⁸⁸ See E. W. Smith, *op. cit.*, pp. 62 f; and H. A. Simon, *op. cit.*, p. 3.

⁸⁹ See H. A. Simon, *op. cit.*, p. 128; W. B. Donham, *op. cit.*, p. 97; and Marshall Edward Dimock, *The Executive in Action* (New York: Harpers, 1945), p. 149.

⁹⁰ It is recognized that limited alternatives always exist.

But it is line and function decentralization with emphasis. It is line and function decentralization that recognizes that informal communication between the central and regional offices will develop and will affect the activities of regional functional division personnel—whether the central line authority wills it to or not. It is line and function decentralization that emphasizes line and function relationships, that states clearly and unequivocally where formal responsibility rests, that attempts to limit the ultimate effect of a relationship characterized by advice-giving rather than by order-giving.

It recognizes that American cultural values include more than a simple premium for ritualistic performance of the orders of a hierarchical superior. It recognizes that American man's motivation includes more than formal reward. Hence his making of decisions is not based exclusively on formal and legal criteria. And, indeed, at the same time, it recognizes that in American culture it is impossible exclusively to confine the factors involved in man's decision-making to formal and legal criteria.

Nevertheless, line and function decentralization also recognizes that American cultural values do place a premium on the acceptance of the formal orders of a superior in a hierarchy. It recognizes that if democratic government is to be kept responsible to the people through elected public officials, then legal and formal rules must be kept superior to informal guides that grow informally and unplanned. While multiple supervision does provide ultimate formal control at the highest central level of the scalar chain, at the lower levels it tends to allow the dominance of informal guides and does not immediately provide formal answers to a functional division in the field. To paraphrase James W. Fesler's question, in a pinch the formal rules must get the superior accommodations.⁹¹

The extent to which the National War Labor Board succeeded in utilizing the advantages of both the functional specialists and the area generalists was accidental and not a result of a well-planned organizational and supervisory structure. The NWLB's developed practice of multiple supervision created many difficulties. Its advantages could have been achieved and its disadvantages dispelled, by a strong system of line and function decentralization.

⁹¹ *Area and Administration*, *op. cit.*, p. 82.

CHAPTER XV

CONCLUSIONS

I want to say I hope I am never connected with an agency that has done as poor a job on general administration as this agency has, because it's never worked out from the top procedure, proper procedure, for efficient operation.

—Wayne Morse, Public Member, NWLB, Verb. Trans.,
December 3, 1943, pp. 549 f.

My own experience in government . . . is that you get a problem and you set down what seems to you like an ideal solution to a problem, and that is a pretty easy thing to do. As a matter of fact, all of the college professors and columnists all appraise our work in terms of that step number one.

Step number two means that you have to start paring down that ideal solution in terms of what you can get, what you can get people to agree on. I don't mean the three sides of the Board, but other governmental agencies, so you take your ideal solution and modify it as to what is achievable from a practical standpoint, what you can get.

The third thing you have to do is modify it in terms of what is administratively possible, and you come out and the college professors and particularly classic economists, always appraise it in terms of step number one, which is a snap. . . . The third job . . . is the development of the administrative mechanisms so you can delegate to somebody the manner of the application of this policy.

It may be that the administrative obstacles are so formidable that we have to go case by case.

—George Taylor, Chairman, NWLB, Verb. Trans., Conference of
Regional War Labor Board Chairmen June 2, 1945, p. 141.

I have never asserted any leadership on this Board in the matter of organization, or if I have tried to, I haven't succeeded.

—William H. Davis, Chairman, NWLB, Verb. Trans.,
Division A, June 13, 1944, p. A-223.

Born into an atmosphere combining the discordant elements of war and industrial strife, the National War Labor Board faced the uncertain future with an Herculean heart. Its tripartite forebears in structure had failed to achieve less difficult tasks in less difficult times. Its immediate predecessor, the National Defense Mediation Board, had succumbed from inability to cope with problems not so acute. But Pearl Harbor was a stimulant to the child, while the Labor-Management Conference provided sustenance. Throughout its life the tripartite structure handicapped the administrative right hand of the National War Labor Board, but the defect resulted in the compensation of power to its substantive left hand. As the stimulant of war began to wear with victory, the strength of the National War Labor Board began to fade.

It is stark tribute to the loyalty of organized labor and industry in the United States that the National War Labor Board survived the hectic war days. Labor's and industry's sublimation of their own self-interests to aid the effective prosecution of the war and their conformance

to the "no strike-no lockout" pledge enabled the National War Labor Board to limit strikes and lockouts and to limit wage increases. From January 12, 1942, until August 18, 1945, the Board decided 17,650 dispute cases that other agencies had failed to settle. These cases involved 12,000,000 workers. In 95 percent of these cases the dispute was settled without further threat to production.¹ Of the dispute cases decided, the regional boards were responsible for 72 percent that involved 61 percent of the employees affected by the disputes.² From October 3, 1942, until August 17, 1945, the Board decided 436,894 voluntary cases of which less than .005 percent were initially decided by the National Board.³

Immediately after assuming the job of wage stabilization, the National War Labor Board was exceedingly cautious in giving authority to the field. Its delegation of power to act finally was developed on a trial basis. It first limited regional activities to those types of cases with which it had had experience. Regional jurisdiction was limited to those cases that were readily identifiable by quantitative terms. This jurisdiction was gradually broadened under the pressure of the case-load accumulating in the Washington office. Comparatively, the National War Labor Board decentralized authority quickly—so quickly that it decentralized before its own policies had effectively crystallized. However, had it waited for "stability of policy and methods," it might never have decentralized.⁴ The pressure of wartime wage problems demanded decentralization at an accelerated rate. The Board assumed that action of any kind on voluntary adjustments was probably better than inaction.

After the issuance of Executive Order 9328 in April of 1943, the National Board gave the regions broad grants of power under which they were to operate. Gradually the National Board began to restrict these broad areas with more specific interpretations. Early delegations of power to the regions were phrased generally and quite often in terms of permissive or suggestive action. These methods resulted in the regional boards' developing policy in case decisions, because they had no standards to apply. Practices in the regions thus differed widely. Once regional policies had begun to crystallize differently, the National Board might decide a case upon appeal and adopt a broad national policy by its case decision. The regional boards were then obligated to follow the principles of these decisions. In this manner, the National Board attempted to tighten its control and to narrow regional freedom to act.

Delegation of power to the regions was both a process of broad delegation and a process of restriction within the broad grants. Since neither type of authority was clearly phrased, regional boards—without

¹ *Term. Report*, p. 415.

² *Loc. cit.*

³ *Ibid.*, p. 504.

⁴ James W. Fesler, in Fritz Morstein Marx (ed.), *Elements of Public Administration* (New York: Prentice-Hall, 1946), p. 271.

formal authorization—often exercised powers that the National Board thought they did not have. Regional boards acted in such cases until the National Board objected. To a great extent regional boards exercised “reserved” powers.

This situation developed not entirely as a matter of choice by the National Board. It arose in part from the National Board’s penchant for passing the buck to the regions when its members could not agree on a program. The buck was usually passed with the phrase that a particular issue might be settled by a regional board “within its sound discretion under terms of NWLB policy.” This silence by the National Board made the regional boards reluctant to act in many cases, for it provided them with no criteria for action. The result was often delay and inaction.

The National Board was ineffective in adopting criteria that regional boards could apply. If there are to be delegable standards, there has to be an adopted policy. This policy must be capable of being reduced to quantitative terms, if suitable national control is to be maintained. And the National Board was unwilling to adopt a strictly defined policy in quantitative terms, because it wanted every specific case equitably solved. It assumed that the general application of specific rules would lead to injustices. It was completely unwilling to make an administrative sacrifice even to the slightest degree. A “hardship” fund, similar to that adopted by the Office of Price Administration for gasoline rationing,⁵ permitting a small percentage of the cases to be approved on bases beyond the standardized and quantitative limits might have solved the dilemma. For the regional board could have been provided with standards and still been allowed special leeway to solve areal and equitable conditions. Regional boards could always request permission to act, but this system allowed the National Board to make the decisions.

A reason for the National Board’s reluctance to adopt adequate criteria governing fringe adjustments was that it did not want to interfere with the collective bargaining process. If the Board had adopted criteria to any greater extent, it might have been encouraging strikes. For unions that did not have the Board’s minimum approvable standards might have fought to achieve them. For non-wage issues in dispute cases it would have been more difficult to frame criteria. If precise standards had been laid down, there would have been a tendency toward stopping all collective bargaining. As a result all dispute cases might have come to the NWLB for decision. Even under the Board’s adopted policy, this tendency was manifest.

Policy under the NWLB was necessarily dynamic. Public and political pressures were strong enough so that Board policies were constantly changing. The NWLB had to choose between a policy that was consistent and one that was flexible enough to allow it to yield slowly to

⁵ See Emmette S. Redford, *op. cit.*, p. 107.

great pressures. Further, as soon as the Board succeeded in defining generally one issue of its wage policy, emphasis would shift to another issue. And additional problems of adequate criteria would arise. This situation was partially brought about by workers achieving the benefits of one type of adjustment and then turning to other types for further relief.

The National Board's attempt to allow the regional board to meet its own areal problems in a manner peculiar to the region was commendable. Difficulties arose because although the National Board voiced this objective, it was not carried out. The National Board was niggard in allowing regional differences for fear that the national pattern would be upset and for fear that the practice of one region would be used as an argument for the same practice in another.

The NWLB's blanket grant of regional authority to act within the scope of the agency program limitations did not result in regional freedom or in real decentralization for two reasons. First, the regional boards seldom had criteria to apply. They had only the few, if any, case decisions of the National Board. Second, the appeals system resulted in final decisions being made at the national level. The combination of these two factors acted to limit regional freedom. In deciding cases involving issues on which the National Board had not acted, the regional boards were limited in their decisions to the extent that they could anticipate National Board action on appeals cases. When the National Board overthrew a regional decision, the regional board had violated Board policy.

As a result, the regional boards were never certain when they were acting in a manner completely acceptable to Washington. Uncertain jurisdiction led neither to regional freedom, nor to clear cut and decisive action. The regional boards were victims of that administrative morass of responsibility without authority, responsibility without guidance. On the other hand, the National Board felt that the regional boards were not meeting their responsibilities. One is entitled to wonder if uncertainties of Board policy did not encourage violations of stabilization principles and also result in an increased caseload.

The field organization of the NWLB was characterized by tripartite regional boards that exercised quasi-judicial, quasi-legislative, and administrative powers. Tripartitism at the apex of the regional hierarchy colored all regional activity. No part of the regional organization escaped its influence.

The combination of interest group representation and of multi-membered boards weakened faithful adherence to the regional jurisdiction and to national standards. The presence of interest group representatives on regional boards brought to bear on the internal administrative hierarchy the social forces of both the area and the interest groups involved. Tripartite regional boards made the discipline neces-

sary to the hierarchy of command difficult to enforce. With the exception of their action on compliance cases, the loyalties of industry and labor regional board members lay, in order, to their group interest, to the regional board with which they were associated, to the National War Labor Board, and finally to the public interest—insofar as these objects of loyalty can be separated. Disciplining interest group representatives who were necessary in effecting the regional administrative plan threatened the entire NWLB structure.

Tripartitism was a handicap to routine internal administration. In some regions tripartite interference in day-to-day internal administration assumed unnatural proportions so great that the regional programs suffered. Bickering about procedures was not infrequent. The fact that regional board chairmen were responsible for administration, according to national instructions, did not deter the tripartite boards from imposing their administrative ideas upon the chairmen by majority vote.

In deciding voluntary wage stabilization cases, the presence of industry and labor representatives on the regional boards probably resulted in more realistic decisions and made those decisions more acceptable to the interested parties. However, the tripartite structure of regional boards probably also resulted in wage increases more inflationary than those that might have been granted by the public members alone or by a single director.

In enforcing wage stabilization regulations, the regional tripartite device aided the NWLB in publicizing its rules. However, in handling enforcement cases in which a violation of wage stabilization rules had been charged, the industry and labor members of regional boards contributed little or nothing. Industry and labor members were even reluctant to participate in the program.

In deciding dispute cases and in getting compliance with Board orders and with the "no-strike, no-lockout" pledge, the tripartite device was the most effective. Having a "friend" on a panel or on a regional board made the disputants more willing to submit to a Board decision. Industry and labor board and panel members encouraged conformance with Board orders. And each disputant was more willing to accept the advice of his "friend" who was an official than he was to accept the advice of an impartial third party. "Friends," however, often became advocates and needlessly delayed the decision-making process.

It would appear that the tripartite device to carry out governmental policy in labor relations at the regional level would be more appropriate under rules somewhat different from those used by the NWLB. There might be specified the rule that if the public members did not agree completely with either the position of labor or the position of industry on any one issue, the uncompromised public members' position would be the decision of the board. In some instances this system might violate a tenet of tripartitism—equal participation—and make the industry and labor groups merely advisory.

If the organization of the National War Labor Board serve as example, interest group representation at the regional level means that minor policy measures will receive overemphasis at the expense of the more comprehensive agency program. Regional boards were concerned more with what was being decided in the individual case than how the single decision would fit into the general pattern. Interest group representation tended to emphasize minor substantive policy issues without consideration of administrative methods to achieve even the major policy issues.

Because of the relative strength of industry and labor groups in the United States, there is perhaps some justification for having these interest groups represented in a field office carrying out a program affecting them. In war, when the cooperation of the two groups is so urgently needed, there is perhaps even more justification for tripartite boards. But justification does not necessarily result in efficient internal administrative methods. During peace, it would appear that the tripartite device at the regional level offers little of administrative value.

Tripartitism at the regional level in many ways weakened NWLB wage stabilization policy. Tripartitism slowed down the decision-making process, and regional boards thus accumulated great backlogs. The National Board, in an attempt to reduce the backlogs and the tremendous case load, relinquished more and more jurisdiction over types of wage increases and abandoned several relatively strict interpretations of its rules.

Tripartitism at the regional level interfered with substantive activity in another way. The regional tripartite system resulted in many picaresque disagreements among regional board members finding their way to the national level. Time spent by the National Board in discussing many minor internal regional problems might well have been spent in deciding cases. In this sense, tripartitism worked at cross purposes to decentralization. For when regional problems are decided nationally, there is no real decentralization.

The organizational relationship between the National Board and its divisions in Washington on the one hand and the regional boards and their divisions on the other hand was strained. Failure to achieve successful relationships was due to the regions' historical growth, lack of planning, and administrative naïveté.

The National War Labor Board apparently envisaged a line of command running from the national Executive Director to the regional board, and then down to the regional divisions. Communication between national functional divisions and their corresponding divisions in the regions was to be purely advisory. This plan was never fully practiced. In some orders and in some job descriptions, the Board established lines of command directly between the national divisions and the corresponding regional divisions. Encouraged by capable men of strong personality in the national divisions, the regional divisions began accepting as

commands the advice from the national divisions. The result was that, in practice, the NWLB developed a system of multiple supervision.

The experience of the National War Labor Board indicates that informal channels of communication and advice can thrive so strongly, when formal lines of command are weak, that the formal lines of command are made ineffective. And intended informal channels for advice in practice, become formal channels of command. The practice of multiple supervision within the NWLB hierarchy resulted only in confusion. A clearly planned, skillfully announced, and meticulously followed program of line and function organization would have provided both technical guidance and intra-regional coordination. At the same time, the concomitants of multiple supervision—jurisdictional conflicts and national decision-making—could have been avoided.

If the NWLB's program holds any administrative lesson, it is that an agency considering decentralization must necessarily do a thorough job of substantive and procedural planning before decentralizing. In this regard the National War Labor Board failed miserably. The existence of a board, rather than a single individual, made planning difficult, for no one person can speak for a board until it has acted. And the NWLB attempted to solve many problems by delaying its action.

The National Board also demonstrated a decided fear of bureaucracy. It failed to realize the necessity of bureaucratic methods to administer large scale activities. This fear made thorough planning difficult, if not impossible. Skill in administrative planning is not inborn. Men characterized by an impartial attitude in labor relations and men representative of labor and industry are not necessarily equipped to foresee future internal administrative problems. A staff official can more easily "educate" a single individual than he can a board of twelve men.

By August 1945, the regional war labor boards had been operating for two-and-a-half years. Following V-J day, the regional boards relied predominantly on mediation to settle disputes. After October of 1945, the National Board in an effort to liquidate its work refused to accept appeals from regional board directive orders and rulings. Approval of wage increases was confined to those cases that would necessitate price relief. On December 31, 1945, the National War Labor Board was terminated. Its wage stabilization functions, its funds, and its personnel were transferred to the National Wage Stabilization Board. And regional war labor boards became regional wage stabilization boards.⁶

The regional war labor boards had been a novel experiment in administration. The delegation of a combination of administrative powers to regional boards was itself an unusual technique. But combining interest group representation with delegation of power to boards in the

⁶ *The National Wage Stabilization Board, January 1, 1945-February 24, 1945* (Washington: Government Printing Office, 1948), pp. 3 and 8.

field made the National War Labor Board experiment even more significant. If democracy is to survive in modern America, administration must be responsive to the people. The regional war labor boards were an attempt to meet this standard. Other governmental agencies can profit from the National War Labor Board's experience with regional decentralization.

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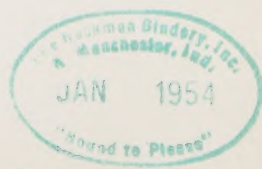
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